

September 17, 2019

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The Environmental Protection Agency and California EPA are responsible for working together to protect public health and the environment in your State. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with U.S. EPA overseeing state actions. Based upon data and reports, the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the State must take to address them. In order to ensure that appropriate steps are being taken to protect Californians EPA would like a remedial plan from the State detailing the steps it is taking to address the issues raised below.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

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<sup>1</sup> EPA first authorized California's the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ [HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" \]](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) (last accessed Sept. 4, 2019).

<sup>3</sup> Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at* [ [HYPERLINK "https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html" \]](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html) (last accessed September 22, 2019).

Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The State is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only, and do not always achieve even that low level of treatment. These discharges may be contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by

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<sup>4</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa)).

CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>5</sup> exceedances,<sup>6</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

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<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

Under this Administration, EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,



[DATE]

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Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), Clean Air Act (CAA) and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks with the states taking the lead role in implementation with U.S. EPA overseeing state actions. Based upon data and reports, the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations as required by these delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. EPA is also requesting a remedial plan from the State that details how it will address each issue identified in this letter.

The protection of air quality is a fundamental mission of both federal EPA and CalEPA and, as you are aware, California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. California should consider withdrawing these plans and resubmitting plans that are effective. In either event, I have instructed staff to begin disapproving many of these plans and to initiate the process of developing federal plans that will protect air quality. The potential sanction for non-compliance with the CAA is for EPA to direct the U.S. Department of Transportation to withhold highway funds from the State of California. While this section of the CAA has not been fully utilized in the past, the issues in California are unparalleled.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> EPA is

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concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The state is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. The CWA requires municipal sewage to be treated to certain levels and to meet water quality standards. Nonetheless, San Francisco's discharges from its combined sewer outfalls do not meet secondary treatment standards, often do not even meet primary treatment standards, and are contributing to the State's to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

The overall picture is that there appear to be significant deficiencies and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified the State's years long approval of the discharges referenced above under its authorized Clean Water Act program with little or no oversight raises serious questions as to whether it is administering a program consistent with federal law.<sup>3</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous

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exceedances of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put at risk the drinking water of nearly 800,000 residents. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>4</sup> exceedances,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

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<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Message

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**From:** Benevento, Douglas [benevento.douglas@epa.gov]  
**Sent:** 9/6/2019 2:34:32 AM  
**To:** Ex. 6 - Administrator  
**CC:** Jackson, Ryan [jackson.ryan@epa.gov]; Molina, Michael [molina.michael@epa.gov]  
**Subject:** Background  
**Attachments:** Talking Points - Update on California - September 2019 (002).docx

Administrator, attached is a revised backgrounder that includes estimates of potential sanctions and penalties against California and San Francisco. These are just estimates to provide a sense of scale, of course the normal process of assessing any penalty or sanction would dictate the final number.

A note on highway funding, if you were to decide that California had failed to meet its obligations to submit attainment or maintenance plans that are approvable you could direct that highway funds be withheld. Those funds could be withheld 18 months after disapproval. We would have to rely upon Transportation to determine how much could be withheld, only funds for areas with rejected plans could be withheld. When we reject a plan we would also have to start developing a FIP. Even if we develop a final FIP counsel indicates that highway funds could still be withheld.

If you have questions please let me know.

Thanks,

Doug

Message

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**From:** Benevento, Douglas [benevento.douglas@epa.gov]  
**Sent:** 8/6/2019 8:17:54 PM  
**To:** Ex. 6 - Administrator  
**CC:** Jackson, Ryan [jackson.ryan@epa.gov]; Molina, Michael [molina.michael@epa.gov]  
**Subject:** Background - Status of California's Implementation of Federal Programs  
**Attachments:** Final - Background Paper - California Implementation of Federal Programs.docx

Administrator, attached is a background paper addressing the status of California's implementation of federal environmental programs. It addresses issues that we have identified related to the Clean Air Act and the Clean Water Act. It also addresses how RCRA could be used to compel performance from the State. The programs did a great job pulling together material that were edited for length and to try and make the content on point with your request.

If you have questions let me know, the program staff that worked on this were Susan Bodine, Anne Idsal, David Ross and Lee Forsgren as well as Matt Leopold. If you have questions you please let me know or any one of these folks.

Best,

Doug

[DATE]

Hon. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, California 95812

Dear Secretary Blumenfeld:

**Commented [BD1]:** We still have to determine who it will be sent to and who will sign it.

Our Agencies are responsible for working to protect California's environment and the health of the citizens of your state. As a result of the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks intentionally with States taking the lead role in implementing the laws, and the U.S. Environmental Protection Agency overseeing the State's actions. Based upon data and reports we have been receiving the Agency is concerned that California is failing in its fundamental mission of protecting human health and the environment. The cost of this failure will ultimately be visited upon California's citizens who will continue to be exposed to unhealthy air and water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. I also want to identify for you the sanctions EPA can assess on California for its non-compliance with federal law. Finally, we are requesting a remedial plan from State details how it will address it will address each issue identified in the letter. - Today, I write to express the Agency's serious concerns about several shortcomings in California's administration of its responsibilities under these statutes and request your immediate attention to remedy these problems.

As you are aware California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff that we should begin disapproving these plans and begin the process of developing federal plans that will protect air quality. I have directed staff to begin the process which will ultimately result in EPA directing the Department of Transportation to withhold highway funds from the State of California. California does have the opportunity to remedy the deficiencies in its plans, EPA is prepared to offer whatever additional assistance the State needs in this matter.

<sup>1</sup> EPA first approved California's assumption of the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that “piles of human feces” on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.

**Commented [FL2]:** Should also mention LA since we do above.

Even more troubling is the City of San Francisco’s years-long practice—under the auspices of CalEPA’s approval—of routinely discharging large quantities of untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean. The Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards; nonetheless, California has authorized San Francisco’s discharges in a permit issued under California’s authorized state Clean Water Act program. This practice endangers public health, and as a result EPA has begun the enforcement process will initiate enforcement proceedings against the City. San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. To be sure, EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. Despite this the City will still need to spend billions of dollars to modernize its sewer system to avoid having the dumping untreated and partially treated sewage into San Francisco Bay. However, the State has not acted with a sufficient sense of urgency is not acting quickly enough to abate this public health and environmental problem, and we are forced to proceeding with our enforcement efforts. The State’s years long approval of these discharges under its authorized Clean Water Act program raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>3</sup>

**Commented [BD3]:** There is a timing issue here, I think the letter may go before the actual initiation of enforcement

**Commented [FD4]:** OECA should confirm whether this should be disclosed

The State’s lack of action in response to the homelessness crisis and San Francisco’s illegal discharges of untreated sewage appears to plague other programs administered by CalEPA. For instance, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which

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is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

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PRIVILEGED—DELIBERATIVE—DO NOT RELEASE  
DRAFT—SEPTEMBER 5, 2019

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Administrator

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<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ [HYPERLINK](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" ] (last accessed Sept. 4, 2019).

San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, San Francisco's discharges from its combined sewer outfalls do not meet secondary treatment standards, often do not even meet primary treatment standards, and are contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>3</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

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<sup>3</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa)).

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>4</sup> exceedances,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

---

<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.



Message

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**Sent:** 9/25/2019 2:49:26 AM  
**To:** Ross, David P [ross.davidp@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**Subject:** RE: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September, 2019.docx

Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should amend.

Get it to Beth White who can put it on letterhead.

Per Corry, the Post will get this letter at noon and it will be embargoed.

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>  
Sent: Tuesday, September 24, 2019 10:24 PM  
To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
Subject: Re: Cal Letter and Press Release

Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

Sent from my iPad

> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>  
> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>  
> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.  
>  
> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.  
>  
> The NOV will not go until next week - is the target Thursday?  
>  
> I need a copy of the signed letter before I talk to press.  
>

> -----Original Message-----

> From: Benevento, Douglas <benevento.douglas@epa.gov>  
> Sent: Tuesday, September 24, 2019 7:24 PM  
> To: Forsgren, Lee <Forsgren.Lee@epa.gov>  
> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>

> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.  
>

> Sent from my iPhone  
>

>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>>  
>> Doug  
>>

>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.  
>>

>> Lee  
>>

>> Sent from my iPhone  
>>

>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

>>>

>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>

>>> -----Original Message-----

>>> From: Ross, David P <ross.davidp@epa.gov>

>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>> Subject: Cal Letter and Press Release

>>>

>>> Deliberative; Pre-Decisional

>>>

>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

>>>

>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

>>>

>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

>>>

>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

>>>

>>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

>>>

>>> I'm turning my attention to the TPs now.

>>>

>>> Sent from my iPad

> <Water TPs spb edits.docx>



## Talking Points

### California's compliance with the Clean Water Act and Safe Drinking Water Act

- Today EPA Sent a letter to The State of California expressing our concern over whether California is exercising the appropriate level of oversight of the Clean Water Act and the Safe Drinking Water Act.
- The issues in the letter arose from questions the administrator received at a congressional oversight hearing about drinking water quality in certain California cities, recent press coverage of homelessness and the environmental impact of that crisis. We have also been working with the City of San Francisco and CalEPA a permit that is currently deficient and allowing for effluent to run into San Francisco Bay.
- The above issues prompted to also review California's performance implementing other aspects of the CWA. The results of that review have raised questions whether the State's implementation is adequate. We are going to await their response before drawing final conclusions but at this point it appears that the State may benefit from enhanced EPA oversight.
- One area that we are confident in California should have the resources to run these programs effectively. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.
- As the President said last week, the Agency is aware of the growing homelessness crisis developing in several major California cities, including Los Angeles and San Francisco. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from adding additional untreated human waste entering nearby waters. Those waters are frequently used for recreation.
- San Francisco, Los Angeles and the State are not acting with urgency to investigate and if necessary, mitigate the risks to human health and the environment that may result from the homelessness crisis.
- We are also concerned with the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons combined sewage and stormwater into San Francisco Bay and the Pacific Ocean.
- San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law.

- By failing to maintain its sewer infrastructure, the City also has allowed raw sewage to back up into homes and businesses. The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance.
- We are concerned that CalEPA's permit allows for discharge of untreated and partially treated storm water runoff and sewage into the San Francisco Bay. Because San Francisco Bay is used for recreational purposes this matter is of serious concern to EPA and should also be a concern for the State of California.
- In order to meet the minimum standards of the CWA San Francisco must invest billions of dollars to modernize its sewer system, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses.
- EPA has been committed to helping the State address this problem. EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects
- Our preliminary review of the CWA found issues of concern:
  - For example, in 2018, the national rate of significant noncompliance by facilities operating under water discharge permits was about 25%, but it was 37% in California.
  - EPA has made getting the significant noncompliance rate down a priority through its National Compliance Initiatives.
  - We also are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act.
  - Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits.
    - By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent;
    - The University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent
    - The Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California.
  - Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.
- EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based

violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule violations, impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
  - 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.
  - These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

[DATE]

:

Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), the Clean Air Act (CAA) and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks with the States taking the lead role in implementation with U.S. EPA overseeing State actions. Based upon data and reports the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations as required by these delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. Finally, we are requesting a remedial plan from the State that details how it will address each issue identified in this letter.

As you are aware California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff to begin disapproving these plans and initiate the process of developing federal plans that will protect air quality. Please note that as part of the process EPA can direct the U.S. Department of Transportation to withhold highway funds from the State of California. California should consider withdrawing and resubmitting plans that are effective, EPA is prepared to offer technical assistance to the State as requested.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not

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<sup>1</sup> EPA first authorized California's the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" ] (last accessed Sept. 4, 2019).

appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. EPA is cognizant that the state is failing to properly implement these programs.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. The CWA requires municipal sewage to be treated to certain levels and to meet water quality standards. Nonetheless, San Francisco's discharges from its combined sewer outfalls do not meet secondary treatment standards, often do not even meet primary treatment standards, and are contributing to violations of water quality standards. By failing to maintain its sewer infrastructure, the City also has allowed raw sewage to back up into homes and businesses. The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses. However, the State has not acted with a sufficient sense of urgency to abate this public health and environmental problem under its own authorities. The State's years long approval of these discharges under its authorized Clean Water Act program with little or no oversight raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>3</sup>

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage caused EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total

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<sup>3</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa)).

cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

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These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

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DRAFT—SEPTEMBER 5, 2019

these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Message

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**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Fotouhi, David [fotouhi.david@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Woods, Clint [woods.Clint@epa.gov]  
**Subject:** RE: Consolidated version  
**Attachments:** California Letter - Draft Final.docx

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, September 6, 2019 3:03 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** RE: Consolidated version

I agree with Susan.

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**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Friday, September 6, 2019 5:00 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** RE: Consolidated version

Recommend changing the word "assumed" to "authorized" in the insert.

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, September 6, 2019 4:55 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** RE: Consolidated version

Doug,

Attached are Dave Ross and my comments.

Lee

---

**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Friday, September 6, 2019 4:01 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** Consolidated version

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

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All, I have done my best to consolidate the different suggestions to the letter. If you have a recommendation that was no incorporate please don't assume it was rejected, if you feel strongly about it let me know, I may just have missed it. Justin, I apologize I should have emailed this to you as well. Will you please review the CAA section and make certain it is written as it should be and make any other suggestions you might have. If the rest of you would also please look at it again an make any substantive or stylistic changes I would appreciate it. It does need to be accurate. Susan I think you had questions about California's compliance rate for NPDES vs. the national compliance rate. I kept the percentages in the letter but if you have concerns let me know and we can take them out.

David, if you would just review one last time to ensure it is in decent shape I would appreciate it.

Thanks,

Doug

[DATE]

:

Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), the Clean Air Act (CAA) and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks with the States taking the lead role in implementation with U.S. EPA overseeing State actions. Based upon data and reports the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations as required by these delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. Finally, we are requesting a remedial plan from the State that details how it will address each issue identified in this letter.

As you are aware California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff to begin disapproving these plans and initiate the process of developing federal plans that will protect air quality. California should consider withdrawing and resubmitting plans that are effective, EPA is prepared to offer technical assistance to the State as requested. A potential sanction for non-compliance with the CAA is for EPA to direct the U.S. Department of Transportation to withhold highway funds from the State of California. While this section of the CAA has not been fully utilized in the past, the issues in California are unparalleled.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from

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<sup>1</sup> EPA first authorized California's the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ [HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces"](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) ] (last accessed Sept. 4, 2019).

untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The state is failing to properly implement these programs.

San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. The CWA requires municipal sewage to be treated to certain levels and to meet water quality standards. Nonetheless, San Francisco's discharges from its combined sewer outfalls do not meet secondary treatment standards, often do not even meet primary treatment standards, and are contributing to violations of water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses. The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance.

While this issue is significant, the State has not acted with a sense of urgency to abate this public health and environmental problem under its own authorities. The State's years long approval of the discharges referenced above under its authorized Clean Water Act program with little or no oversight raises serious questions as to whether California is administering this program in a manner consistent with federal law.<sup>3</sup> Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage caused EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation

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<sup>3</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa)).

of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

## **EPA Tools to Address the Environmental Impact of Homelessness in Los Angeles**

The Environmental Protection Agency is responsible for implementation of the Municipal Separate Storm Sewer System (MS4) program and providing oversight for states that have been authorized to run the program. Among other things, the MS4 program is designed to protect receiving waters from contaminants in stormwater.

The growing homeless population in Los Angeles, estimated at 60,000 individuals, is resulting in human pathogens and other waste being discharged into nearby water bodies. California EPA has been delegated authority to run the MS4 program and has the responsibility for issuing permits and ensuring compliance. It is the responsibility of the CalEPA to mitigate these discharges and ensure that public health and the environment is protected. If the State is not providing the necessary oversight, then EPA can step in and take direct action.

1. EPA can provide compliance assistance to CalEPA and/or Los Angeles:
  - a. Provide technical assistance to either party on how to manage the environmental issues caused by homelessness.
    - i. EPA could offer training to and conduct joint inspections with the CalEPA and the City.
  - b. While compliance assistance is an important tool EPA can use to improve environmental outcomes in many instances, it is unlikely EPA can offer any technical information to either the City or State that would improve environmental compliance in this case. This is not a technically difficult issue to manage and simply reflects a lack of will on the part of City and CalEPA to enforce their own standards and the federal standards under the Clean Water Act.
2. EPA can take a more aggressive oversight position:
  - a. Initiate active oversight of California's implementation of the MS4 program in Los Angeles
    - i. Perform an audit of CalEPA's oversight of the Los Angeles MS4 program.
      1. Recommend steps CalEPA should be taking to address the change in circumstances (i.e. increase in homelessness) since the permit was issued.
      2. Determine if a permit amendment is warranted.
  - b. If CalEPA fails to take appropriate action, EPA could threaten to withdraw its delegation to implement the Clean Water Act.
  - c. Have EPA Region 9 regularly inspect the City's compliance with its permit to determine if the City is out of compliance.
  - d. Send out an information request (a pre-enforcement measure) to the City.
3. Initiate an enforcement action against the City:
  - i. If the result of the inspections demonstrates non-compliance, initiate enforcement.
    1. The above inspections would have to demonstrate a basis for enforcement.
    2. The enforcement outcome would require Los Angeles to create and implement a plan to ensure that MS4 requirements are being met.

Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 9/6/2019 4:56:47 PM  
**To:** Forsgren, Lee [Forsgren.Lee@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Woods, Clint [woods.clint@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** RE: California Letter  
**Attachments:** California Letter - Revised (003)- dhb.docx

Doug:

I have tracked a few comments and suggestions to some of the new text in the attached version; it also includes a modified version of Clint's CAA paragraph in a comment bubble for your consideration.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, September 6, 2019 12:37 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** RE: California Letter

I am fine with the letter as revised.

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**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Friday, September 6, 2019 12:18 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** California Letter

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Attached is the letter with some revisions. I tinkered with the opening paragraph and added a paragraph on the CAA, if what Clint put together is better please use that instead. I also added a sentence about the cost of compliance in the San Francisco section.

Susan I think you have some additional data on releases of sewage from San Francisco, I forgot the number and duration if you would add that in where appropriate I would appreciate it. This has to be to the administrator by tomorrow morning so if you would please look at it and comment today I would appreciate it.

Thanks,

Doug

[DATE]

Hon. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, California 95812

Dear Secretary Blumenfeld:

**Commented [BD1]:** We still have to determine who it will be sent to and who will sign it.

Our Agencies are responsible for working to protect California's environment and the health of the citizens of your state. As a result of the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks intentionally with States taking the lead role in implementing the laws, and the U.S. Environmental Protection Agency overseeing the State's actions. Based upon data and reports we have been receiving the Agency is concerned that California is failing in its fundamental mission of protecting human health and the environment. The cost of this failure will ultimately be visited upon California's citizens who will continue to be exposed to unhealthy air and water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. I also want to identify for you the sanctions EPA can assess on California for its non-compliance with federal law. Finally, we are requesting a remedial plan from State details how it will address ~~it will address each issue identified in the letter.~~ - Today, I write to express the Agency's serious concerns about several shortcomings in California's administration of its responsibilities under these statutes and request your immediate attention to remedy these problems.

**Commented [FD2]:** Consider a less-definitive formulation like "air and water that may pose risks to human health"

**Commented [FD3]:** Consider a broader formulation like "actions, including sanctions, that EPA can take"

As you are aware California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many likely are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff that we should begin disapproving these any plans that do not meet federal standards and begin the process of developing federal plans that will protect air quality. I have directed staff to begin the process which will ultimately result in EPA directing the Department of Transportation to withhold highway funds from the State of California. California does have the opportunity to

**Commented [FD4]:** I've made some text edits here to avoid this letter being interpreted as the decision document for a disapproval so that we can ensure that any future disapproval would be reviewed on the record and rationale we would assemble to support it.

<sup>1</sup> EPA first approved California's assumption of the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.



remedy the deficiencies in its plans, EPA is prepared to offer whatever additional assistance the State needs in this matter.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that “piles of human feces” on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.

Even more troubling is the City of San Francisco’s years-long practice—under the auspices of CalEPA’s approval—of routinely discharging large quantities of untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean. The Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards; nonetheless, California has authorized San Francisco’s discharges in a permit issued under California’s authorized state Clean Water Act program. This practice endangers public health, and as a result EPA has begun the enforcement process will initiate enforcement proceedings against the City. San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. To be sure, EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. Despite this the City will still need to spend billions of dollars to modernize its sewer system to avoid having the dumping untreated and partially treated sewage into San Francisco Bay. However, the State has not acted with a sufficient sense of urgency is not acting quickly enough to abate this public health and environmental problem, and we are forced to proceeding with our enforcement efforts. The State’s years long approval of these discharges under its authorized Clean Water Act program raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>3</sup>

The State’s lack of action in response to the homelessness crisis and San Francisco’s illegal discharges of untreated sewage appears to plague other programs administered by CalEPA. For instance, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of

**Commented [FD5]:** Here is a modified version of Clint’s paragraph, for your consideration:

EPA is also concerned that, over the last 40 years, California has failed to carry out its most basic tasks under the Clean Air Act (CAA). California has among the worst air quality in the U.S., with 82 nonattainment areas and 34 million people living in areas that do not meet National Ambient Air Quality Standards, or NAAQS (more than twice as many people as any other state in the country). In addition, the state of California, which facilitates the submittal of State Implementation Plans (SIPs) from its 35 local air districts, represents a disproportionate share of backlogged SIPs not acted upon in the statutory timeframe of 18 months, including roughly one-third of the Agency’s overall SIP backlog (the elimination of which is a priority for EPA). The vast majority of these SIPs are inactive, and at this time we believe many have fundamental approvability issues. We recommend that the state of California withdraw these inactive SIPs, a list of which the Agency’s Region 9 can provide. If not, the Agency intends to take action to disapprove any SIPs that are inconsistent with Clean Air Act requirements over the next year. As you know, if a SIP is disapproved, timelines begin for New Source Review permitting sanctions and highway funding sanctions, as well as for issuance of a Federal Implementation Plan (FIP).

**Commented [FL6]:** Should also mention LA since we do above.

**Commented [BD7]:** There is a timing issue here, I think the letter may go before the actual initiation of enforcement.

**Commented [FD8]:** OECA should confirm whether this should be disclosed

<sup>2</sup> See, e.g., Raphelson, Samantha. “San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) available at [HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" ] (last accessed Sept. 4, 2019).

<sup>3</sup> EPA’s current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. This data is publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" ]).

discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE  
DRAFT—SEPTEMBER 5, 2019

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

~~Andrew R. Wheeler~~  
~~Administrator~~

## Qs & As on

### California's compliance with the Clean Water Act and Safe Drinking Water Act

What types of Water deficiencies did your letter outline?

- As the President said last week, the Agency is aware of the growing homelessness crisis developing in several major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>1</sup> indicate that “piles of human feces” on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from adding additional untreated human waste entering nearby waters. Those waters are frequently used for recreation.
- San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. EPA is cognizant that the state is failing to properly implement these programs.

The President mentioned concerns with San Francisco what are those concerns?

- In addition to the “piles of human feces” on sidewalks and streets which may run directly into the San Francisco Bay from the out of control Homeless problem which in some cases or may run into storm sewers exacerbating the even more troubling concern regarding the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons combined sewage and stormwater into San Francisco Bay and the Pacific Ocean.
  - The Clean Water Act (CWA) requires municipal sewage to be treated to certain levels and to meet water quality standards. It is far from clear that San Francisco has been meeting even primary treatment standards in during significant storm events, let alone the rigorous secondary treatment standards necessary for discharge to a water used for primary recreation like the San Francisco Bay, and are contributing to serious violations of water quality standards.
  - By failing to maintain its sewer infrastructure, the City also has allowed raw sewage to back up into homes and businesses. The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance.
  - San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law.
-

- EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance.
- In order to meet the minimum standards of the CWA San Francisco must invest billions of dollars to modernize its sewer system, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses.

That sounds like San Francisco's problem why did you send a letter to the State of California?

- The State of California has not acted with a sufficient sense of urgency to abate this public health and environmental problem under its own authorities. The State's years long approval of these discharges under its authorized Clean Water Act program with little or no oversight raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>2</sup>
- The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage caused EPA to review other programs administered by CalEPA for similar concerns.
- What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight.
  - For example, in 2018, the national rate of significant noncompliance by facilities operating under water discharge permits was about 25%, but it was 37% in California.
  - EPA has made getting the significant noncompliance rate down a priority through its National Compliance Initiatives.
  - We also are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act.
  - Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits.
    - By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent;
    - The University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent
    - The Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California.

- Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

Are there other concerns about California's program?

- EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:
  - 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
  - 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
  - 2 systems with serious Ground Water Rule<sup>3</sup> violations,<sup>4</sup> impacting over 250,000 residents.
  - 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
  - 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.
- These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

Have you tried to help California with implementation of the program?

- California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

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<sup>3</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>4</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

## **Background on California Environmental Issues**

### **Draft Document**

### **Deliberative Only, Do Not Distribute**

#### **Air:**

Waiting on Ann

OGC is sending an outline of delegation withdrawal

#### **Water:**

##### **San Francisco CSO**

The City of San Francisco discharges untreated and partially treated sewage into San Francisco Bay at 36 locations. The City also discharges partially treated wastewater into the Pacific Ocean. Although the Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards, the State of California has authorized these discharges in a permit issued under California's authorized state Clean Water Act program.

EPA considers San Francisco to be in violation of the Clean Water Act and is in the process of negotiating a consent decree with the City to put them under an enforceable obligation to meet the requirements of federal law.

San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law (NYC is another).

The City is in the process of upgrading their sewer system and have outlined a 3-phase program of sewer upgrades. The \$2.9 billion Phase 1 is underway. All three phases will cost an estimated \$6.9 billion.

EPA provided SFPUC a WIFIA loan of \$699M in July 2018 for the Phase 1 projects in July 2018, but much of that funding was for biosolid digestors.

CA is not the only permitting authority; parts of the Bay are marine sanctuaries, so NOAA has a role.

#### **Options:**

- File a complaint against San Francisco alleging violations of the federal Clean Water Act.
- Publicize San Francisco's raw and partially treated sewage discharges and EPA's actions to bring the City into compliance (i.e., the ongoing Consent Decree negotiations).
- Use the fact that the State has taken no action to bring the city into compliance as an additional reason to withdraw CWA authorization (see the next section for more on that option).

Any combination of the above.

#### **Considerations:**

- Filing a complaint in the middle of consent decree negotiations is contrary to EPA's current efforts to work with cities to solve their wastewater problems in a reasonable way and could hinder negotiations.
- If we file a complaint before we have an agreement with the City on a consent decree, we lose control. The court has jurisdiction and environmental groups can intervene in the case as a matter of right.
- Publicizing our enforcement action could draw criticism as politicizing enforcement.

#### Talking Points:

- For too long, California has stood by and allowed San Francisco to discharge raw or partially treated sewage into San Francisco Bay and the Pacific Ocean, endangering public health.
- This is simply unacceptable.
- Under this Administration, we believe in a level playing field. Just like cities in Illinois, Indiana, Ohio and elsewhere, we are stepping in and holding San Francisco accountable for their water pollution. Every city and State must comply with the Clean Water Act.

We can provide additional background information and source documents that can be provided upon request.

#### Violations of Section 402 NPDES permit requirements

We've been unable to identify specific examples of the State of California or any of its municipalities using storm sewers to dispose of waste on the streets or of uncontrolled discharges of waste from homes into jurisdictional waters.

However, there are numerous examples in California of flagrant violations of NPDES permits (see the attached table) that have been allowed to continue with little to no state oversight. Just in this past quarter we have identified 23 instances of discharges into waters of the United States that are significant violations.

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Ojai Valley Sanitary District	Total recoverable Selenium	11117
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City of Redding	Total residual Chlorine	1900
City of Biggs	Total general Coliform	817
Owens-Brockway Glass Container Inc.	Diethylhexyl phthalate [DEPH]	625
City of Los Angeles	Ideno[1,2,3-cd]pyrene	442
University of Southern California	Total recoverable Copper	420
Royal Catering Company	Total recoverable Copper	371.5
Stallion Springs Community Services District	Unionized Ammonia	344
Camarillo Sanitary District	Diethylhexyl phthalate [DEPH]	325
Forestville Water District	Nitrogen as Total nitrate	311
Mountain House Community Services District	Total Nitrogen as ammonia	183
Mt. Shasta	Copper, total recoverable	154.33333
San Juan Bautista	Chloride]	94.333333
West County Agency; West County Wastewater District	Biological Oxygen Demand - 5-day, 20 deg C	67
McKinleyville Community Services District	Dichlorobromomethane	59.5
City of Brawley	Total Recoverable Copper	35
City of Eureka	Nitrogen, & total ammonia	29
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City of Corona	Total Dissolved Solids	4.6666667

## Federal Funding

Over the last five years California has received over **\$1.16 Billion** to implement the CWA including **\$253.5 million in FY-18 and \$247 million in FY-19**

In addition to the programmatic funding for these programs California has received over **\$152 million in categorical grants** over this time to improve compliance with CWA.

## Clean Water Act Options:

There are several actions that could be taken against the State of California and or the major municipalities in California for failure to properly undertake its responsibilities under environmental statutes generally and the Clean Water Act specifically.

- **Begin the process to formally withdraw the State's CWA authorization (we would have to withdraw the full program). We would recommend against this option.**
  - We could immediately begin the withdrawal process by issuing an order which will begin the process of withdrawal. This is an administrative process requiring a hearing and the process is governed by rules laid out in regulation.
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    - This is not a good option, it would take too much time, just preparing an order would take months, and it would be litigated for years if we decided to pull the delegation.
    - This option would require significant additional staffing and appropriations at EPA in order to carry out the program that is currently delegated to California
- **Notify the State they are failing to implement the program and demand an explanation and remedial plan, notify them that we are examining whether they are implementing a program consistent with the CWA.**
  - We could begin that process by sending a detailed letter to CalEPA and the Governor outlining the deficiencies we found in the implementation of the program and ask for an explanation and remedial plan.
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  - There is a 2000 petition from NRDC asking that CWA delegation to the Southern California Water Control Board be withdrawn for failure to adequately protect from Storm Water Runoff – that could be resurrected under the current failures caused by human waste, needles, rat infestations and other adverse impacts, to reopen the delegation of the CWA to the State of California.
- **Direct Enforcement Action under Clean Water Act or RCRA**
  - Subject to factual verification – EPA could take direct enforcement action against the Cities of San Francisco and Los Angeles, or other municipalities for discharging human waste, needles, and/or other bio toxins into Waters of the United States without a permit. We have not yet been able to identify specific facts that would support this claim but there have been allegation to this effect and we could research it further.

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  - EPA could enforce against or take other actions to rectify violations ~~or of Total Maximum Daily Loads (TMDL) for trash in Los Angeles and/or San Francisco.~~

- **Bring Citizen's suits direct enforcement action under RCRA**

- Subject to factual verification EPA could bring an enforcement action-citizen's suit under RCRA Section 6973 ~~2~~ against both Los Angeles and San Francisco for creating hazards that may present an imminent and substantial endangerment through the disposal ~~illegal disposition of Solid Waste (i.e. – human feces, bio hazards, needles etc.) The Cities of Los Angeles, San Francisco, and the State of California could be defined as a person under Section 6972 of RCRA.~~

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Commented [BS1]: 7002 is the citizen suit imminent and substantial endangerment authority; 7003 is the US's imminent and substantial endangerment authority. Does not need to be illegal disposal. Source of the material will likely be runoff so the same facts for violations of stormwater permits would be a factual predicate here, except for proving imminent and substantial endangerment. Advise against setting that bar too low.

### Federal Housing Act and TSCA Options

In 2017, Reuters reported that LA County has one of the largest populations of children with elevated blood lead levels. [ HYPERLINK "<https://www.reuters.com/investigates/special-report/usa-lead-la/>" ] [ HYPERLINK "<https://laist.com/2017/04/21/lead-poisoning-higher-than-flint-in.php>" ]

HUD recently fined landlords of federally assisted housing in LA for lead paint violations. [ HYPERLINK "<https://www.latimes.com/business/la-fi-hud-lead-paint-violations-20180628-story.html>" ]

According to its web site, lead paint has been found in properties owned by the Housing Authority of the City of Los Angeles (HACLA), a state-chartered public agency. HUD could investigate their compliance status.

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Mr. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, CA 95812

Dear Secretary Blumenfeld,

I am writing regarding serious shortcoming under which California administers its Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) programs. The Environmental Protection Agency (EPA) is concerned that recent press reports as well as first hand observations of significant amounts of untreated human waste generated by the massive homeless build up in certain California cities, the cities of San Francisco and Los Angeles, are being carried by storm water into "Waters of the United States". This waste flow is clearly a major violation of the Clean Water Act as well a serious threat to public health. Unfortunately, California does not appear to be taking any action to rectify or even mitigate these serious public health violations.

EPA approved California's assumption of the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. EPA approved California's base Safe Drinking Water Act program in xxxx. Based on the State's inaction on this serious public health crisis amid clear violations of the Clean Water Act, EPA has undertaken a review to determine if the State has demonstrated the minimum capacity needed to properly administer these programs and has administered the programs consistent with its obligations and has taken the necessary steps to enforce those authorities that it does possess.

California appears to have demonstrated a general failure to enforce permit limitations. For example, the City of San Francisco discharges untreated and partially treated sewage into San Francisco Bay at 36 locations. The City also discharges partially treated wastewater into the Pacific Ocean. Although the Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards, the State of California has authorized these discharges in a permit issued under California's authorized state Clean Water Act program for decades.

EPA considers San Francisco to be in violation of the Clean Water Act and is in the process of negotiating a consent decree with the City to put them under an enforceable obligation to meet the requirements of federal law. Why has California approved permits with these clearly illegal discharges for decades.

In 2000 received a petition from NRDC asking that CWA delegation to the Southern California Water Control Board be withdrawn for failure to adequately protect the population of Southern California from Storm Water Runoff. Given the serious risk to human health associated with human waste, needles, rat infestations and other adverse impacts on human health and the environment associated with the homeless populations in Los Angeles, EPA must consider action under the petition.

In addition to San Francisco and Los Angeles, EPA's data<sup>1</sup> identifies that there are 175 major Publicly Owned Treatment Works (POTWs) in the state of California. Two POTWs (in Sacramento and San Francisco) also treat wastewater from combined sewer systems (CSOs). The most recent compliance status for the 175 major facilities indicates that 15 of those major POTWs are in significant noncompliance. In addition to the 15 major POTWs and two CSOs 11 non-major POTWs are currently in significant noncompliance. These are startling numbers.

California is authorized to administer the many aspects of the Clean Water Act and especially the National Pollutant Discharge Elimination System (NPDES) permitting program under Section 402 of that Act and writes the majority of the NPDES permits within the state.<sup>2</sup> EPA has discovered that there are also numerous examples in California of flagrant violations of NPDES permit limits that have been allowed to continue with little to no state oversight. Just in this past quarter we have identified 23 instances of discharges into waters of the United States that are significant violations.

For example, the City of Los Angeles exceeded its permit limit for a contaminant which is a probable human carcinogen by 442 percent and the University of Southern California exceeded its permit limit for copper by 420 percent. See highlighted items below. These are serious violations and pending an investigation could indicate a lapse in the State's obligation under their CWA authorization. Subject to appropriations EPA has provided significant funding to California to run a program that meets minimum federal requirements. Based upon this information, we may be able to question whether the state is fulfilling its obligation.

In addition to the violations highlighted above EPA has found Additional Significant CWA-NPDES Programmatic Issues. The Accuracy of data reported on facility information, inspections, violations, and enforcement actions appear not to be completely reported as required. Also, the timeliness of Inspection reports is unclear with many stormwater inspection reports in particular lacking the most basic of documentation of the date the document was finalized or delivered to the facility. The state also appears to lack an appropriate methodology to consistently report even single event violations.

EPA began a review of California's implementation of SDWA when at a hearing Administrator Wheeler was questioned by Representative Nanette Diaz Barragán, of California's 44th District about why her constituents in Compton were being asked to drink brown water. Upon review EPA determined that Representative Barragan constituents were the customers of the Santa Ana Los Angeles County Water District. While Testing has found that there are no health-based violations or any lead and copper rule action level exceedances, there were significant monitoring and reporting (M&R) violations. These included violations of the Total Coliform Rule monitoring and reporting (MR) violation in 2015, MR violations for Stage 2 Disinfectants and Disinfection Byproducts Rule (TTHM and HAA5) in January 2017, and Revised Total Coliform Rule (RTCR) reporting violation in February 2017. There have been also been secondary violations related to the discoloration of the water and the presence of manganese.

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<sup>1</sup> Data provided in response to this information request were obtained from EPA's Enforcement and Compliance History Online (ECHO) water facility public search tool ([ [HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa"](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa) ]), which is a repository of enforcement data for facilities regulated under the Clean Water Act

<sup>2</sup> Ibid

The issues raised by Representative Barrigan highlight significant concerns with the State's implementation of SDWA and so we conducted a cursory review and determined that California has significant issues arising out of its assumption and implementation of the requirements under the Safe Drinking Water Act. Of the State's 7,512 public water systems (PWS) and 2,914 community water systems (CWS)<sup>3</sup> numerous health-based violations have occurred. These violations call into question the State's ability to protect the public.

In just the last reporting Quarter of 2019, California had 202 Community Water Systems with 665 health-based violations putting almost 800,000 of its citizens' drinking water risk of significant health impacts. These violations Include:

- 67 systems with 194 serious health-based violations of Arsenic levels impacting over 101,000 residents.
- 210 lead action level exceedances (ALEs) at 168 Public Water Systems impacting over 10,000 people, in just the most recent 3-year interval.
- 2 systems with serious Ground Water Rule (GWR) violations impacting over 250,000 people. The GWR is to reduce drinking water groundwater source/well vulnerabilities from contaminant intrusion. These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey". For example, an opening through which bacteria could enter a well head that the system has not repaired.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct Regulations impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards impacting almost 12,000 people.

The enclosure to this letter identifies concerns with or questions about the State's implementation of its authority. As such EPA will be conducting an in-depth evaluation of California's delegation of the of the CWA and the SDWA. We will be reviewing any omissions or deviations from federal requirements and violations of California's own water quality standards that are specifically identified. What immediate corrective actions have been or will be undertaken by the State.

In addition EPA is requesting a specific timeline upon which the State intends to correct the specific deficiencies in the implementation of its programs undertaken outlined in this letter.

Please provide a written response to this letter. With the reply, please provide a detailed statement with specific citations, demonstrating that the State has adequate authority and capabilities on the topics identified in the letter. If the State lacks explicit authority, please provide the State's plan, including a schedule with milestones, for establishing the required authority. Please provide the reply letter September 30, 2019.

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<sup>3</sup> Base on the second quarter of 2019 reporting to the SDWIS databaswe

**Standard AW closing**

## **Background on California Environmental Issues**

### **Draft Document**

### **Deliberative Only, Do Not Distribute**

#### **Air:**

Waiting on Ann

OGC is sending an outline of delegation withdrawal

#### **Water:**

##### **San Francisco CSO**

The City of San Francisco discharges untreated and partially treated sewage into San Francisco Bay at 36 locations. The City also discharges partially treated wastewater into the Pacific Ocean. Although the Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards, the State of California has authorized these discharges in a permit issued under California's authorized state Clean Water Act program.

EPA considers San Francisco to be in violation of the Clean Water Act and is in the process of negotiating a consent decree with the City to put them under an enforceable obligation to meet the requirements of federal law.

San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law (NYC is another).

The City is in the process of upgrading their sewer system and have outlined a 3-phase program of sewer upgrades. The \$2.9 billion Phase 1 is underway. All three phases will cost an estimated \$6.9 billion.

EPA provided SFPUC a WIFIA loan of \$699M in July 2018 for the Phase 1 projects in July 2018, but much of that funding was for biosolid digestors.

CA is not the only permitting authority; parts of the Bay are marine sanctuaries, so NOAA has a role.

#### **Options:**

- File a complaint against San Francisco alleging violations of the federal Clean Water Act.
- Publicize San Francisco's raw and partially treated sewage discharges and EPA's actions to bring the City into compliance (i.e., the ongoing Consent Decree negotiations).
- Use the fact that the State has taken no action to bring the city into compliance as an additional reason to withdraw CWA authorization (see the next section for more on that option).

Any combination of the above.

#### **Considerations:**



- Filing a complaint in the middle of consent decree negotiations is contrary to EPA's current efforts to work with cities to solve their wastewater problems in a reasonable way and could hinder negotiations.
- If we file a complaint before we have an agreement with the City on a consent decree, we lose control. The court has jurisdiction and environmental groups can intervene in the case as a matter of right.
- Publicizing our enforcement action could draw criticism as politicizing enforcement.

#### Talking Points:

- For too long, California has stood by and allowed San Francisco to discharge raw or partially treated sewage into San Francisco Bay and the Pacific Ocean, endangering public health.
- This is simply unacceptable.
- Under this Administration, we believe in a level playing field. Just like cities in Illinois, Indiana, Ohio and elsewhere, we are stepping in and holding San Francisco accountable for their water pollution. Every city and State must comply with the Clean Water Act.

We can provide additional background information and source documents that can be provided upon request.

#### Violations of Section 402 NPDES permit requirements

We've been unable to identify specific examples of the State of California or any of its municipalities using storm sewers to dispose of waste on the streets or of uncontrolled discharges of waste from homes into jurisdictional waters.

However, there are numerous examples in California of flagrant violations of NPDES permits (see the attached table) that have been allowed to continue with little to no state oversight. Just in this past quarter we have identified 23 instances of discharges into waters of the United States that are significant violations.

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  -

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Message

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**From:** McFaul, Jessica [mcfaul.jessica@epa.gov]  
**Sent:** 9/26/2019 12:38:50 AM  
**To:** Bodine, Susan [bodine.susan@epa.gov]; Ross, David P [ross.davidp@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]; Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]  
**Subject:** RE: LAST QUESTION! 09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS\_CB.docx  
**Attachments:** 09-25-2019 CA Water Letter Press Release DRAFT.pdf

Here's a PDF including all the changes highlighted. Jess

---

**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Wednesday, September 25, 2019 5:52 PM  
**To:** McFaul, Jessica <mcfaul.jessica@epa.gov>; Ross, David P <ross.davidp@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>  
**Subject:** RE: LAST QUESTION! 09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS\_CB.docx

Stormwater will not be 1973 since Congress clarified that authority in the 1987 amendments and EPA's regs were 1990. Can you say:

California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973;

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**From:** McFaul, Jessica <mcfaul.jessica@epa.gov>  
**Sent:** Wednesday, September 25, 2019 5:42 PM  
**To:** Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>  
**Subject:** RE: LAST QUESTION! 09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS\_CB.docx

All edits highlighted here. Please check for accuracy. If you both sign off, I will clean up and have it delivered the Doug, RJ and AAW. Thanks again! Jess

---

**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Wednesday, September 25, 2019 4:04 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>  
**Cc:** McFaul, Jessica <mcfaul.jessica@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>  
**Subject:** Re: LAST QUESTION! 09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS\_CB.docx

Yup, very useful chart. We also include the 73, 78 and 89 dates in FN 1 of the letter.

Sent from my iPad

On Sep 25, 2019, at 4:01 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

EPA has a table on the NPDES website - State program authorization

Say original permit program authorization for CA was may 14 1973

Sent from my iPhone

On Sep 25, 2019, at 12:53 PM, McFaul, Jessica <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)> wrote:

Dave/Susan,

AAW wants to add the year that California receive it's delegated authorities under the Clean Water Act. With that piece of information, I can make the final edits. (I will also be clarifying in the attachment that the 1 billion gallons is combines sewage and stormwater.)

Thanks again for all your help!

Jess

Jessica McFaul  
Senior Advisor for Strategic and Regional Communications  
Office of the Administrator, Office of Public Affairs  
U.S. Environmental Protection Agency  
[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)  
Desk: 202-564-6429  
Cell: Ex. 6 Personal Privacy (PP)

<09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS\_CB.docx>

## **EPA Administrator Wheeler calls out California's Environmental Protection Failure**

WASHINGTON – Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent a letter to California Governor Gavin Newsom raising several issues with the state's failure to protect Californians from degraded water, outlining deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.

"California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations," **said EPA Administrator Andrew Wheeler**. "If California does not step up to its delegated responsibilities, then EPA will be forced to take action."

For years, California has pushed policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973; however, the state's recent lack of urgency addressing serious issues in San Francisco resulting from lack of proper oversight and enforcement is concerning. This, among other issues identified in the administrator's letter, is a failure to properly implement federal programs and has resulted in the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state's years long approval of the discharges of over 1 billion gallons per year of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources – which includes a significant tax base and EPA providing over \$1 billion in federal grants and a \$699 million loan through the Water Infrastructure Finance and Innovation Act – San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and deficiencies identified in the letter.

To read the full letter, click [here](#).

For more information about EPA's clean water programs, click [here](#).

###

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~~AAW QUOTE (Potential fodder: EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the state to act decisively under its authorities to address the years-long problems that it has created and subsequently ignored. The state does not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.)~~ California needs to fulfill its obligation to protect its water bodies and more importantly public health and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations. If it does not EPA will step in to ensure that the protection of public health and the environment.

For years, California has pushed disastrous policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California is responsible for implementing municipal storm water management and waste treatment under the Clean Water Act; however, the state's lack of urgency in addressing serious issues in San Francisco and elsewhere resulting from lack of proper oversight and enforcement is concerning. in addressing these problems has led to its This among other issues identified in the Administrator's letter is a failure to properly implement federal programs and the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state's years long approval of the discharges of over 1 billion gallons per year into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources – which includes a significant tax base and EPA providing over \$1 billion in federal grants and a \$699 million loan through the Water Infrastructure Finance and Innovation Act – San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and violations identified in the letter.

To read the full letter, click [here](#).

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###



DRAFT-DELIBERATIVE

September 17, 2019

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The Environmental Protection Agency and California EPA are responsible for working together to protect public health and the environment in your State. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with U.S. EPA overseeing state actions. Based upon data and reports, the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the State must take to address them. In order to ensure that appropriate steps are being taken to protect Californians EPA would like a remedial plan from the State detailing the steps it is taking to address the issues raised below.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

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<sup>1</sup> EPA first authorized California's the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" ] (last accessed Sept. 4, 2019).

<sup>3</sup> Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at* [ HYPERLINK "https://www.waterboards.ca.gov/sanfranciscobay/water\_issues/programs/TMDLs/SFbaybeache\_sbacteria.html" ] (last accessed September 22, 2019).

San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The State is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's discharges from its combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to do not meet secondary treatment standards, often do not even meet primary treatment standards remove floatables and settleable solids only, and do not always achieve even that low level of treatment. These discharges ,and may be are contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

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<sup>4</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([ [HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa) ).

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>5</sup> exceedances,<sup>6</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

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<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

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###

DRAFT-DELIBERATIVE



Message

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**From:** Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**Sent:** 9/25/2019 8:01:27 PM  
**To:** Jackson, Ryan [jackson.ryan@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Block, Molly [block.molly@epa.gov]  
**CC:** Bodine, Susan [bodine.susan@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: Cal Letter and Press Release

Great...thank you! Do you all have what you need to transmit to the Governor at 7:30amET tomorrow?

-----Original Message-----

From: Jackson, Ryan <jackson.ryan@epa.gov>  
Sent: Wednesday, September 25, 2019 3:33 PM  
To: Ross, David P <ross.davidp@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Block, Molly <block.molly@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Subject: RE: Cal Letter and Press Release

Attached is the final, signed letter.

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>  
Sent: Wednesday, September 25, 2019 10:04 AM  
To: Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Subject: Re: Cal Letter and Press Release

FYI. I have worked with Susan to give this a comprehensive review and clean up edit. Mel, Lee and I just reviewed those edits, and Mel will be putting this into a final version to pass on to the AO shortly.

Thanks all.

Sent from my iPad

> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>  
> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>  
> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>  
> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
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> Sent: Tuesday, September 24, 2019 10:24 PM  
> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
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> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
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> Sent from my iPad  
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>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
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>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>>

>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.  
>>

>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

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>> The NOV will not go until next week - is the target Thursday?

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>> I need a copy of the signed letter before I talk to press.

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>>>

>>> Lee

>>>

>>> Sent from my iPhone

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>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

>>>>

>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>>

>>>> -----Original Message-----

>>>> From: Ross, David P <ross.davidp@epa.gov>

>>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>>> Subject: Cal Letter and Press Release

>>>>

>>>> Deliberative; Pre-Decisional

>>>>

>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

>>>>

>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

>>>>

>>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

>>>>

>>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

>>>>

>>>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

>>>>

>>>> I'm turning my attention to the TPs now.

>>>>

>>>> Sent from my iPad

>> <Water TPs spb edits.docx>

> <California Water Letter - Final - September, 2019.docx>

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"California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations," **said EPA Administrator Andrew Wheeler**. "If California does not step up to its delegated responsibilities, then EPA will be forced to take action."

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>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>>

>>>> -----Original Message-----

>>>> From: Ross, David P <ross.davidp@epa.gov>

>>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>>> Subject: Cal Letter and Press Release

>>>>

>>>> Deliberative; Pre-Decisional

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>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

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>>>> I'm turning my attention to the TPs now.

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>>>> Sent from my iPad

>> <Water TPs spb edits.docx>

> <California Water Letter - Final - September, 2019.docx>

September 17, 2019

:

The U.S. Environmental Protection Agency (U.S. EPA) and California Environmental Protection Agency (CalEPA) are responsible for working together to protect public health and the environment in your State. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with U.S. EPA overseeing state actions. Based upon data and reports, the Agency is concerned that California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the State must take to address them. In order to ensure that appropriate steps are being taken to protect Californians, EPA would like a remedial plan from the State detailing the steps it is taking to address the issues raised below.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

---

<sup>1</sup> EPA first authorized California's base CWA program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise SDWA responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces," NPR (Aug. 1, 2018), *available at* [ [HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces"](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) ] (last accessed Sept. 22, 2019).

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Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The State is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only, and do not always achieve even that low level of treatment. These discharges may be contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years-long approval of the discharges referenced above under its authorized CWA program raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The City's practices endanger public health and the U.S. EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked U.S. EPA staff to consider all options available to bring the City into compliance.

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"[https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html)" ] (last accessed Sep. 22, 2019).

<sup>4</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([ [HYPERLINK](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa) "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" ] ).

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth U.S. EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious matters that warrant a strong review by California.

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

The U.S. EPA also has concerns about CalEPA's administration and oversight of SDWA programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
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These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

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Under this Administration, the U.S. EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

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Best Regards,

Message

---

**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 9/25/2019 2:10:37 PM  
**To:** Schiermeyer, Corry [schiermeyer.corry@epa.gov]; Ross, David P [ross.davidp@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]  
**CC:** Bodine, Susan [bodine.susan@epa.gov]; Jackson, Ryan [jackson.ryan@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Cal Letter and Press Release

Making the edits now and will do. Thanks!

-----Original Message-----

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Sent: Wednesday, September 25, 2019 10:09 AM  
To: Ross, David P <ross.davidp@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
Subject: RE: Cal Letter and Press Release

Thank you.

Mel...please let me know when you get it to Beth...I will follow up with her to ensure we get a final, signed and dated copy.

Thank you!

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>  
Sent: Wednesday, September 25, 2019 10:04 AM  
To: Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Subject: Re: Cal Letter and Press Release

FYI. I have worked with Susan to give this a comprehensive review and clean up edit. Mel, Lee and I just reviewed those edits, and Mel will be putting this into a final version to pass on to the AO shortly.

Thanks all.

Sent from my iPad

> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>  
> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>  
> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>  
> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Tuesday, September 24, 2019 10:24 PM  
> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>  
> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
>  
> Sent from my iPad  
>  
>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>>  
>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>>

>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

>>

>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

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>> The NOV will not go until next week - is the target Thursday?

>>

>> I need a copy of the signed letter before I talk to press.

>>

>> -----Original Message-----

>> From: Benevento, Douglas <benevento.douglas@epa.gov>

>> Sent: Tuesday, September 24, 2019 7:24 PM

>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>

>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

>> Subject: Re: Cal Letter and Press Release

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>> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

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>> Sent from my iPhone

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>>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>>>

>>> Doug

>>>

>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

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> <California Water Letter - Final - September, 2019.docx>

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**To:** Benevento, Douglas [benevento.douglas@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** RE: Cal Letter and Press Release  
**Attachments:** Water TPs spb edits.docx

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>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

>>

>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

>>

>> I'm turning my attention to the TPs now.

>>

>> Sent from my iPad

## Talking Points

### California's compliance with the Clean Water Act and Safe Drinking Water Act

- Today EPA Sent a letter to ~~The~~ State of California expressing our concern over whether California is exercising the appropriate level of oversight of the Clean Water Act and the Safe Drinking Water Act.
- The issues in the letter arose from questions the administrator received at a congressional oversight hearing about drinking water quality in certain California cities and, recent press coverage of homelessness and the environmental impact of that crisis. We have also been working with the City of San Francisco and CalEPA ~~on the city's wastewater discharge permits, which are a permit that is currently deficient and allowing for effluent to run into San Francisco Bay.~~
- The above issues prompted EPA to also review California's performance implementing other aspects of the CWA. The results of that review have raised questions whether the State's implementation is adequate. We are going to await their response before drawing final conclusions but at this point it appears that the State may benefit from enhanced EPA oversight.
- One area that we are confident in ~~is that~~ California should have the resources to run these programs effectively. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.
- As the President said last week, the Agency is aware of the growing homelessness crisis developing in several major California cities, including Los Angeles and San Francisco. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from adding additional untreated human waste entering nearby waters. Those waters are frequently used for recreation.
- San Francisco, Los Angeles and the State are not acting with urgency to investigate and if necessary, mitigate the risks to human health and the environment that may result from the homelessness crisis.
- We are also concerned with the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging annually over one billion gallons combined sewage and stormwater into San Francisco Bay and the Pacific Ocean.
- San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law.

**Commented [BS1]:** The permit that is under review at OW is for the oceanside facility. It discharges to the Pacific Ocean not the Bay. However, the bayside permit also is expired and up for renewal. I think conversations on that are just beginning. Both permits are deficient.

**Commented [BS2]:** I intend to mention the existing bacteria TMDL for SF Bay beaches and note that it fails to identify either the CSO discharges or homeless encampments as sources. I would like to say that could be part of a broader program review.

- By failing to maintain its sewer infrastructure, the City also has allowed raw sewage to back up into homes and businesses. The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance.

- We are concerned about that CalEPA's permit allows for discharge of untreated and partially treated storm water runoff and sewage into the San Francisco Bay and the Pacific Ocean. Because San Francisco Bay, including discharges near beaches, this is used for recreational purposes this matter is of serious concern to EPA and should also be a concern for the State of California.

**Commented [B53]:** The permit does not authorize the untreated discharges, just the ones that receive primary treatment only.

- In order to meet the minimum standards of the CWA San Francisco must invest billions of dollars to modernize its sewer system, avoid dumping untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean, and keep raw sewage inside pipes instead of homes and businesses.

- EPA has been committed to helping the State address this problem. EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects

- Our preliminary review of the CWA found issues of concern:

◦ For example, in 2018, the national rate of significant noncompliance by facilities operating under water discharge permits was about 25%, but it was 37% in California.

**Commented [B54]:** Old data.

◦ EPA has made getting the significant noncompliance rate down a priority through its National Compliance Initiatives.

◦ We also are aware of numerous examples of exceedances in limits in violations of state-issued water discharge NPDES permits under section 402 of the Clean Water Act.

**Commented [B55]:** They issue permits under their authorized state law, not 402.

◦ Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States exceeding in violation of permit limits.

- By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent;
- The University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent
- The Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious events violations that warrant a strong review by California.

◦ Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

**Commented [B56]:** A state program review finding that is data related, not public health related.

- EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are

aware of numerous ~~exceedances of recent health-based standards~~ violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based ~~exceedances~~ violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based ~~exceedances~~ violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule violations, impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 ~~exceedances~~ violations of radiological standards, impacting almost 12,000 residents.
- These ~~events~~ violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

**Commented [B57]:** Should these be characterized as violations? These are not numeric standards so we can't say exceedance.

Message

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**From:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Sent:** 9/6/2019 1:11:00 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]; Benevento, Douglas [benevento.douglas@epa.gov]  
**CC:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**Subject:** RE: Draft California Letter  
**Attachments:** California Letter - Revised (002)- dlf.docx

David,

I only have a couple of small suggested edits. Take a look and see what you think.

Lee

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**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Thursday, September 5, 2019 8:21 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Cc:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Draft California Letter

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Hi, Doug.

Attached is a draft letter to California identifying deficiencies in the State's CWA and SDWA programs. In assembling the letter, I worked from the draft letter that Lee provided to me as well as the background materials you sent. Matt has reviewed the letter and his comments are reflected in this draft. I defer to you as to who else should review, although I included one comment in the draft identifying a statement taken from the background materials that OECA should confirm it is comfortable with including.

The draft does not currently include a paragraph on Clean Air Act issues, as I learned today that there may be a separate letter in process addressing Clean Air Act issues specifically. If that's not the case, Clint has drafted a paragraph that could be included (with some modification to ensure that the statements are not interpreted as decisions on any particular pending SIP). Let me know and I will get this paragraph to you.

Let me know if you have any questions or need anything else. Thank you.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

[DATE]

Hon. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, California 95812

Dear Secretary Blumenfeld:

Our Agencies are responsible for working to protect California's environment and the health of the citizens of your state. As a result of the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks intentionally with States taking the lead role in implementing the laws, and the U.S. Environmental Protection Agency overseeing the State's actions. Today, I write to express the Agency's serious concerns about several shortcomings in California's administration of its responsibilities under these statutes and request your immediate attention to remedy these problems.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.

Commented [FL1]: Should also mention LA since we do above.

Even more troubling is the City of San Francisco's years-long practice—under the auspices of CalEPA's approval—of routinely discharging large quantities of untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean. The Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards; nonetheless, California has authorized San Francisco's discharges in a permit issued under California's authorized state Clean Water Act program. This practice endangers public health, and as a result EPA has begun

<sup>1</sup> EPA first approved California's assumption of the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) available at [HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces"] (last accessed Sept. 4, 2019).

the enforcement process against the City. San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. To be sure, EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, the State has not acted with a sufficient sense of urgency is not acting quickly enough to abate this public health and environmental problem, and we are forced to proceeding with our enforcement efforts. The State's years long approval of these discharges under its authorized Clean Water Act program raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>3</sup>

**Commented [FD2]:** OECA should confirm whether this should be disclosed

The State's lack of action in response to the homelessness crisis and San Francisco's illegal discharges of untreated sewage appears to plague other programs administered by CalEPA. For instance, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019,

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<sup>3</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. This data is publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa)).

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- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Andrew R. Wheeler  
Administrator

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.



[DATE]

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**Commented [FD1]:** OECA should confirm whether this should be disclosed

The State's lack of action in response to the homelessness crisis and San Francisco's illegal discharges of untreated sewage appears to plague other programs administered by CalEPA. For instance, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

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These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Andrew R. Wheeler  
Administrator

---

<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

Message

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**From:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Sent:** 9/6/2019 10:02:41 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]  
**CC:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Woods, Clint [woods.clint@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Consolidated version  
**Attachments:** Edits to California Letter - Revised (004)- dr dlf.docx

Doug:

Justin and I have reviewed this latest draft and tracked our comments in the attached version. Please let me know if you have any questions or need anything else from us; thank you.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, September 6, 2019 5:03 PM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** RE: Consolidated version

I agree with Susan.

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**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Friday, September 6, 2019 5:00 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** RE: Consolidated version

Recommend changing the word "assumed" to "authorized" in the insert.

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**From:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Sent:** Friday, September 6, 2019 4:55 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** RE: Consolidated version

Doug,

Attached are Dave Ross and my comments.

Lee

---

**From:** Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>

**Sent:** Friday, September 6, 2019 4:01 PM

**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Schwab, Justin <[Schwab.Justin@epa.gov](mailto:Schwab.Justin@epa.gov)>; Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Leopold, Matt (OGC) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>; Woods, Clint <[woods.clint@epa.gov](mailto:woods.clint@epa.gov)>

**Subject:** Consolidated version

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

All, I have done my best to consolidate the different suggestions to the letter. If you have a recommendation that was not incorporate please don't assume it was rejected, if you feel strongly about it let me know, I may just have missed it. Justin, I apologize I should have emailed this to you as well. Will you please review the CAA section and make certain it is written as it should be and make any other suggestions you might have. If the rest of you would also please look at it again and make any substantive or stylistic changes I would appreciate it. It does need to be accurate. Susan I think you had questions about California's compliance rate for NPDES vs. the national compliance rate. I kept the percentages in the letter but if you have concerns let me know and we can take them out.

David, if you would just review one last time to ensure it is in decent shape I would appreciate it.

Thanks,

Doug

[DATE]

Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA), the Clean Air Act (CAA), and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks with the intent that States take the lead role in implementing the laws, and that the U.S. Environmental Protection Agency oversee State actions. Based upon data and reports we have been receiving, the Agency is concerned that California's implementation of federal environmental laws is failing to meet its obligations, the fundamental mission of protecting human health and the environment as required by these delegated federal programs. The cost of this failure will ultimately be visited upon California's citizens who will continue to be exposed to unhealthy air and water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. Finally, we are requesting a remedial plan from the State that details how it will address each issue identified in this letter.

**Commented [FL1]:** Dave thinks and I agree that is may be a bit strong.

As you are aware, California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff to begin disapproving any plans that do not meet Clean Air Act requirements, these plans and to initiate the process of developing federal plans that will protect air quality. I also have directed staff to begin the process which may ultimately result in EPA directing. Please note that, as a consequence of disapproving California's plans, part of the process EPA may need to prohibit direct the U.S. Department of Transportation from approving certain to withhold highway funds from certain areas of the State of California until California comes into compliance until California can withdraws these plans and attempt to remedy them in that event. EPA is prepared to offer whatever additional assistance the State needs to develop approvable plans in the event this is what you choose to do.

**Commented [FD2]:** Needed to avoid charge that this is a decision document (Justin)

**Commented [FD3]:** Edited to track statutory language (Justin)

<sup>1</sup> EPA first authorized California's the-base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that “piles of human feces” on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. EPA is cognizant that the state is failing to properly implement these programs.

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PRIVILEGED—DELIBERATIVE—DO NOT RELEASE  
DRAFT—SEPTEMBER 5, 2019

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These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

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Best Regards,

Message

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**From:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Sent:** 9/6/2019 8:54:32 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Woods, Clint [woods.clint@epa.gov]  
**Subject:** RE: Consolidated version  
**Attachments:** California Letter - Revised (004)- dr & dlf.docx

Doug,

Attached are Dave Ross and my comments.

Lee

---

**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Friday, September 6, 2019 4:01 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** Consolidated version

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

All, I have done my best to consolidate the different suggestions to the letter. If you have a recommendation that was no incorporate please don't assume it was rejected, if you feel strongly about it let me know, I may just have missed it. Justin, I apologize I should have emailed this to you as well. Will you please review the CAA section and make certain it is written as it should be and make any other suggestions you might have. If the rest of you would also please look at it again an make any substantive or stylistic changes I would appreciate it. It does need to be accurate. Susan I think you had questions about California's compliance rate for NPDES vs. the national compliance rate. I kept the percentages in the letter but if you have concerns let me know and we can take them out.

David, if you would just review one last time to ensure it is in decent shape I would appreciate it.

Thanks,

Doug

[DATE]

Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA), the Clean Air Act (CAA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks with the intent that States take the lead role in implementing the laws, and that the U.S. Environmental Protection Agency oversee State actions. Based upon data and reports we have been receiving the Agency is concerned that California's implementation of federal environmental laws is failing to meet its obligations, the fundamental mission of protecting human health and the environment as required by these delegated federal programs. The cost of this failure will ultimately be visited upon California's citizens who will continue to be exposed to unhealthy air and water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. Finally, we are requesting a remedial plan from the State that details how it will address each issue identified in this letter.

Commented [FL1]: Dave thinks and I agree that is may be a bit strong.

As you are aware California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff to begin disapproving these plans and initiate the process of developing federal plans that will protect air quality. I also have directed staff to begin the process which may ultimately result in EPA directing. Please note that as part of the process EPA may need to direct the U.S. Department of Transportation to withhold highway funds from the State of California until California can withdraw these plans and attempt to remedy them in that event, EPA is prepared to offer whatever additional assistance the State needs in the event this is what you choose to do.

The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of

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DRAFT—SEPTEMBER 5, 2019

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Message

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**From:** Bodine, Susan [bodine.susan@epa.gov]  
**Sent:** 9/6/2019 8:49:11 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Woods, Clint [woods.clint@epa.gov]  
**Subject:** RE: Consolidated version  
**Attachments:** California Letter - Revised (004)-.docx

Let's drop the SNC compliance rate sentences. The third quarter FY 2019 data look better. See attached

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**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Friday, September 6, 2019 4:01 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>  
**Subject:** Consolidated version

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Best Regards,

Message

---

**From:** Bodine, Susan [bodine.susan@epa.gov]  
**Sent:** 9/6/2019 7:22:19 PM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Woods, Clint [woods.clint@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: California Letter  
**Attachments:** California Letter - Revised (003)- dhb spb 2.docx

Lee convinced me to add the LA, USC, and Marin county violations back in. See attached. I would just ask Lee to confirm these are in ECHO as **violations** (not exceedances which may not constitute a violation if the limitation is a monthly or quarterly average)

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**From:** Bodine, Susan  
**Sent:** Friday, September 6, 2019 2:28 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: California Letter

Attached are my suggested edits with explanatory comment bubbles. It does read a bit like an NOV so I am interested in timing.

Susan

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**From:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Sent:** Friday, September 6, 2019 12:18 PM  
**To:** Fotouhi, David <Fotouhi.David@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>  
**Subject:** California Letter

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Attached is the letter with some revisions. I tinkered with the opening paragraph and added a paragraph on the CAA, if what Clint put together is better please use that instead. I also added a sentence about the cost of compliance in the San Francisco section.

Susan I think you have some additional data on releases of sewage from San Francisco, I forgot the number and duration if you would add that in where appropriate I would appreciate it. This has to be to the administrator by tomorrow morning so if you would please look at it and comment today I would appreciate it.

Thanks,

Doug

[DATE]

Hon. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, California 95812

Dear Secretary Blumenfeld:

**Commented [BD1]:** We still have to determine who it will be sent to and who will sign it.

Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks intentionally with the intent that States taking the lead role in implementing the laws, and that the U.S. Environmental Protection Agency overseeing the State's actions. Based upon data and reports we have been receiving the Agency is concerned that California's implementation of federal environmental laws is failing the in its fundamental mission of protecting human health and the environment. The cost of this failure will ultimately be visited upon California's citizens who will continue to be exposed to unhealthy air and water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. I also want to identify for you the steps sanctions EPA can take assess on in California due to for its non-compliance with federal law. Finally, we are requesting a remedial plan from the State that details how it will address it will address each issue identified in this letter. - Today, I write to express the Agency's serious concerns about several shortcomings in California's administration of its responsibilities under these statutes and request your immediate attention to remedy these problems.

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As you are aware California has not been successful in meeting federal health-based air quality standards. These standards are established to protect human health and the environment and states are required to submit plans demonstrating how they will meet these standards. While California has submitted such plans, many are not approvable. They lack basic elements necessary to ensure that they will improve California's air quality. I have instructed staff to that we should begin disapproving these plans and initiate begin the process of developing federal plans that will protect air quality. I also have directed staff to begin the process which may will ultimately result in EPA directing the Department of Transportation to withhold highway funds

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from the State of California. California does have the opportunity to remedy the deficiencies in its plans. EPA is prepared to offer whatever additional assistance the State needs in this matter.

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The State's lack of action in response to the homelessness crisis and San Francisco's illegal discharges of ~~untreated inadequately treated~~ sewage appears to plague other programs administered by CalEPA. For example, in 2018, the national rate of significant noncompliance by facilities operating under water discharge permits was about 25%, but it was 37% in California. EPA has made getting the significant noncompliance rate down a priority through its National Compliance Initiatives. For instance, we also we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

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EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
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Compliance History Online (ECHO) water facility public search tool ([ [HYPERLINK](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa) "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" ] ).

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DRAFT—SEPTEMBER 5, 2019

- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Andrew R. Wheeler  
Administrator

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

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Message

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**From:** Benevento, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=93DBA0F4F0FC41C091499009A2676F89-BENEVENTO,]  
**Sent:** 9/8/2019 1:44:57 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** RE: Draft Final

Thanks

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**From:** Bodine, Susan <bodine.susan@epa.gov>  
**Sent:** Saturday, September 7, 2019 6:20 PM  
**To:** Benevento, Douglas <benevento.douglas@epa.gov>  
**Subject:** Re: Draft Final

We can just avoid using the word violation

Sent from my iPhone

On Sep 7, 2019, at 8:04 PM, Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)> wrote:

Ok. I'll check that. We should not draw that conclusion in this letter. Thanks

Sent from my iPhone

On Sep 7, 2019, at 5:36 PM, Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)> wrote:

Understand but I still want to confirm that we have said that the exceedances cited by Lee are violations. That is a legal conclusion

Sent from my iPhone

On Sep 6, 2019, at 6:21 PM, Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)> wrote:

Here is where we stand;

I took most changes in total, with the exception of changes to the first paragraph. In that paragraph I attempted to merge together different suggestions. Regarding the CAA paragraph, I rewrote it to make it more clear the options available to the State and the EPA. I broke up the San Francisco paragraph. It was much too long I also reordered it so it flowed better. Also in that section of the letter I added a sentence foreshadowing future action (Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance).

Other than that I edited it for clarity and attempted to make it an easier read.

My plans are to forward this tomorrow, so if any part of my changes or any other aspect of the letter is problematic let me know before noon eastern tomorrow. If there are none I will assume we are all in agreement.

Thanks for your time on, I really do appreciate.

Doug

<Draft Final - California Letter.docx>

Message

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**Sent:** 9/6/2019 8:00:40 PM  
**To:** Fotouhi, David [fotouhi.david@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Schwab, Justin [schwab.justin@epa.gov]; Bodine, Susan [bodine.susan@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Woods, Clint [woods.Clint@epa.gov]  
**Subject:** Consolidated version  
**Attachments:** California Letter - Revised (004)- dhb spb 2.docx

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All, I have done my best to consolidate the different suggestions to the letter. If you have a recommendation that was not incorporated please don't assume it was rejected, if you feel strongly about it let me know, I may just have missed it. Justin, I apologize I should have emailed this to you as well. Will you please review the CAA section and make certain it is written as it should be and make any other suggestions you might have. If the rest of you would also please look at it again and make any substantive or stylistic changes I would appreciate it. It does need to be accurate. Susan I think you had questions about California's compliance rate for NPDES vs. the national compliance rate. I kept the percentages in the letter but if you have concerns let me know and we can take them out.

David, if you would just review one last time to ensure it is in decent shape I would appreciate it.

Thanks,

Doug

[DATE]

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Our Agencies are responsible for working together to protect California's environment and the health of the citizens of your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA), the Clean Air Act (CAA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks with the intent that States take the lead role in implementing the laws, and that the U.S. Environmental Protection Agency oversee State actions. Based upon data and reports we have been receiving the Agency is concerned that California's implementation of federal environmental laws is failing the fundamental mission of protecting human health and the environment. The cost of this failure will ultimately be visited upon California's citizens who will continue to be exposed to unhealthy air and water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline the steps the Agency plans to take to address them. Finally, we are requesting a remedial plan from the State that details how it will address each issue identified in this letter.

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The Agency is also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of

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The State’s lack of action in response to the homelessness crisis and San Francisco’s discharges of inadequately treated sewage appears to plague other programs administered by CalEPA. For example, in 2018, the national rate of significant noncompliance by facilities operating under water discharge permits was about 25%, but it was 37% in California. EPA has made getting the significant noncompliance rate down a priority through its National Compliance Initiatives. We also are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which

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Commented [ 10]: You could find similar issues elsewhere.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.

Compliance History Online (ECHO) water facility public search tool ([ [HYPERLINK](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa) "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" ] ).

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DRAFT—SEPTEMBER 5, 2019

- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Andrew R. Wheeler  
Administrator

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

## **EPA Hot Topics**

**Updated: October 4, 2019**

### **Impeachment:**

- I believe the President will be fully exonerated, as he has been with all other House Democrat investigations.
- I'm focused on the mission of the Agency of protecting human health and the environment. House Democrats should focus on what's best for the nation and not another meritless investigation.

### **Climate Change**

- At EPA, we are addressing Climate Change, and as a Nation, we continue to grow our economy, while also protecting our environment.
- Here in the U.S., our fossil fuels are extracted and produced in a more environmentally conscious manner than anywhere else in the world.
- From 2005 to 2017, total U.S. energy-related CO2 emissions fell by **14 percent**, while the U.S. became the number one energy producer in the world.
- In contrast, global energy-related CO2 emissions increased over 20 percent.
- And since 1990, U.S. natural gas production has **more than doubled**.
- Over that period, methane emissions from natural gas production **fell by over 16 percent**.
- From 1990 to 2018, annual emissions of sulfur dioxide (SO2) from coal-fired power plants fell by over **90 percent** while emissions of (nitrogen oxides) NOx fell by over **80 percent**. And in the past decade alone, mercury emissions from power plants have decreased by nearly **90 percent**.

### **Climate Science/Advisory Boards:**

- EPA is committed to scientific integrity and transparency.
- EPA has the utmost confidence in its career scientist and the members on its science advisory boards and panels.
- EPA routinely takes comments from the public and outside organizations, including those not employed or associated with EPA, and will continue to take into consideration those comments that meet our scientific standards.

### **Air Quality**

- According to the World Health Organization, the U.S. has some of the lowest fine particulate matter levels in the world.
  - U.S. fine particulate matter levels are **five times below the global average**, **seven times below Chinese levels**, and well below France, Germany, Mexico, and Russia.
- Much of this progress has taken place in low-income counties across the country.
- Based on the most recent monitoring data from 2017, **86% of low-income counties were in attainment** with EPA's National Ambient Air Quality Standards (NAAQS), compared to 43% in 2008.

- We are helping areas across the nation reduce air pollution and meet the nation's air quality standards.
- By doing so, many regions across the country are moving from non-attainment to attainment.
- This is breathing new life into the local economy by alleviating a major regulatory burden.

#### **Paris Climate Agreement**

- The U.S. position with respect to the Paris Agreement has not changed. The U.S. intends to withdraw from the Paris Agreement, absent the identification of terms for participation more favorable to the U.S.
- For most countries that sign the Paris Agreement, there are no negative consequences if they don't meet the targets.
- However, under U.S. law, specifically the Clean Air Act, if we go forward with the Paris Agreement and we don't meet our targets, we can be sued by NGOs to force us to meet the targets.
- We are one of the only countries in the world where that could happen. When I explain that to other countries, they say, "No wonder you have concerns."

#### **Lead and Copper Rule**

- As part of Children's Health Month, the U.S. Environmental Protection Agency (EPA) is announcing a proposed rule that significantly improves the actions that water systems have to take to reduce lead in the nation's drinking water.
- This action represents the first major overhaul of the Lead and Copper Rule since 1991 and marks a critical step in advancing the Trump Administration's Federal Action Plan to Reduce Childhood Lead Exposures.
- Although we have made tremendous progress in removing lead from our nation's drinking water, some children and communities are still being exposed to lead.
- EPA is delivering on President Trump's commitment to ensure all Americans have access to safe and clean water by proposing a new Lead and Copper Rule that requires action sooner, increases transparency, and safeguards our children and most at-risk communities.
- In conjunction with today's announcement, EPA and the Department of Housing and Urban Development have launched a new website that summarizes available federal programs that help finance or fund lead service line replacement. The new resource also includes case studies demonstrating how cities and states have successfully leveraged federal resources to support lead service lines (LSLs) replacement projects.
- The agency's proposal takes a proactive and holistic approach to improving the current rule—from testing to treatment to telling the public about the levels and risks of lead in drinking water. When finalized, this proposal will:
  - Require more water systems to act sooner to reduce lead levels and protect public health;
  - Improve transparency and communication; and,
  - Better protect children and the most at-risk communities.
- The proposal focuses on six key areas. Under the proposal, a community water system would be required to take new actions, including, but not limited to:
  - **1) identifying the most impacted areas** by requiring water systems to complete and maintain a publicly-available inventory of the LSLs at homes and requiring water

systems to “find-and-fix” sources of lead when a sample in the home exceeds 15 parts per billion (ppb).

- **2) strengthening drinking water treatment** by requiring corrosion control treatment based on tap sampling results and establishing a new trigger level of 10 ppb (e.g. trigger level outlined below). Water systems will also be required to “find-and-fix” sources of lead by adjusting treatment or water chemistry when a sample in the home exceeds 15 ppb.
- **3) replacing lead service lines** by requiring water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their portion of the line. Additionally, depending on their level above the trigger level, systems would be required take LSL replacement actions, as described below.
- **4) increasing drinking water sampling reliability** by requiring water systems to follow new, improved sampling procedures and rethink sampling sites to better target higher lead levels.
- **5) improving risk communication to customers** by requiring water systems to notify customers within 24 hours if a sample collected in their home is above 15 ppb. Water systems will also be required to conduct regular outreach to the homeowners with LSLs.
- **6) better protecting children in schools and child care facilities** by requiring water systems to take drinking water samples from the schools and child care facilities served by the system.

#### **RFS**

- This past week, EPA announced that President Trump successfully negotiated an agreement on the Renewable Fuel Standard (RFS).
- Under this agreement, the following actions will be undertaken by EPA and USDA:
  - In a forthcoming supplemental proposal building off the recently proposed 2020 Renewable Volume Standards and the Biomass-Based Diesel Volume for 2021, EPA will propose and request public comment on expanding biofuel requirements beginning in 2020.
    - EPA will seek comment on actions to ensure that more than 15 billion gallons of conventional ethanol be blended into the nation’s fuel supply beginning in 2020, and that the volume obligation for biomass-based biodiesel is met. This will include accounting for relief expected to be provided for small refineries.
    - EPA intends to take final action on this front later this year.
    - In the most recent compliance year, EPA granted 31 small refinery exemptions.
- Building on the President’s earlier decision to allow year-round sales of E15, EPA will initiate a rulemaking process to streamline labeling and remove other barriers to the sale of E15.
- EPA will continue to evaluate options for RIN market transparency and reform.
- USDA will seek opportunities through the budget process to consider infrastructure projects to facilitate higher biofuel blends.
- The Administration will continue to work to address ethanol and biodiesel trade issues.

- Since taking office in 2017, the Trump Administration has enacted tax and regulatory policies that have helped make America energy dominant.
- The Administration has cut burdensome red tape through deregulation, including signing a record number of Congressional Review Act (CRA) legislation, repealing the Waters of the United States (WOTUS) rule, reforming the Section 401 process under the Clean Water Act, proposing a new methane rule, and removing the U.S. from the job-killing Paris Climate Accord.
- The Administration has also expedited permitting approvals, has opened up federal land for development, including the Arctic National Wildlife Refuge (ANWR), and will continue to enact pro-growth energy policies to expand American energy dominance.
- EPA will continue to consult with our federal partners on the best path forward to ensure stability in the Renewable Fuel Standard.
- The Trump Administration has overseen year-over-year increases in domestic fuel ethanol production, to the highest level in history and [ [HYPERLINK "https://www.eia.gov/todayinenergy/detail.php?id=39212" \]](https://www.eia.gov/todayinenergy/detail.php?id=39212).
- The President will always seek to engage with stakeholders to achieve wins for the agriculture and energy sectors

#### **California:**

- Highlighting that California has the worst air quality in the nation along with other serious environmental problems is not a political issue. The Trump Administration, unlike the previous administration, will act to protect public health and the environment for all Americans.
- California's inability to comply with the Safe Drinking Water Act has been an ongoing challenge, and was brought to my attention at the Energy & Commerce hearing back in March.
- Congresswoman Barragan asked me about the drinking water in Compton, and I went back to my staff and started looking into it.
- First of all, she only gave me the opportunity to answer 2 "yes or no" questions, so I couldn't explain it to her at the time.
- We delegated the water programs to California, so they are the first line of defense. So were taking a look at a lot of the problems in the California water systems and we outlined them in the letter."

#### **San Francisco Notice of Violation:**

- The Administrator's September 26 letter to Governor Newsom is an oversight letter to the State about their implementation of the Clean Water Act and the Safe Drinking Water Act.
- Oversight of State program implementation and oversight of regulated entities are separate issues.
- On October 2, EPA notified the San Francisco Public Utilities Commission, a regulated entity, that it has identified violations of the City and County of San Francisco's National Pollutant Discharge Elimination System permits regulating discharges from the city's wastewater treatment plants, 36 combined sewer discharge facilities and its combined sewer system, based on inspections and field visits in 2015 and 2016, and subsequently gathered information, such as monitoring data.

- **As the notice explains, the failure to properly operate and maintain the City's sewage collection and treatment facilities creates public health risks.**
- For example, lack of proper operation and maintenance has caused force main and pump station failures that have diverted substantial volumes of raw and partially-treated sewage to flow across beaches and into the San Francisco Bay and the Pacific Ocean.
- EPA expects San Francisco to share ~~our~~ its concern for the protection of public health and surface water resources and to address its ongoing Clean Water Act violations with significant and meaningful measures to ensure a prompt return to full compliance.

#### **CA Water Letter**

- Thursday, September 26, EPA sent a letter to Governor Newsom outlining California's failure to protect Californians from degraded water.
- The letter outlines deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.
- EPA is aware of numerous recent health-based exceedances under the Safe Drinking Water Act.
- These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.
- We are also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment.
- The U.S. EPA stands ready to assist California and CalEPA to protect the health and environment of Californians.
- In order to ensure that appropriate steps are being taken to protect the 40 million Americans living in California, we are asking for a remedial plan from the state detailing the steps it's taking to address the multitude of issues raised in our letter.

#### **CA Air Letter**

- Tuesday, September 24, EPA sent a letter to California Air Resources Board Chair Mary Nichols requesting the state withdrawal its backlog and unapproved State Implementation Plans, and work with EPA to develop complete approvable SIPs.
- Since the 1970s, California has failed to carry out its most basic tasks under the Clean Air Act. California has the worst air quality in the United States with 82 areas that don't obtain National Ambient Air Quality Standards are max and 34 million people living in areas that do not meet the max, more than twice as many people than any other state in the country.
- The state of California represents a disproportionate share of the national list of backlog SIPs, roughly one-third of EPA's overall SIP backlog.
- California's total portion of the SIP backlog is more than 136 with many dating back decades. Most of these SIPs are inactive and appear to have fundamental issues related to approvability.
- In the event California fails to withdraw these SIPs, EPA will give begin the disapproval process for individual plans which triggers statutory clocks for three things: highway funding sanctions; new source review permitting sanctions; a deadline for the issuance of a federal implementation plan for the area.
- To ensure progress is being made on improving air quality in California, EPA requested a response from CARB by October 10th indicating whether it intends to withdraw these SIPs.



EPA stands ready to work with California to meet the administration's goal of clean healthy air for all Americans.

#### **One National Program Rule; SAFE step 1**

- The Trump Administration is revoking California's Federal Waiver on emissions in order to ensure that there is one and only one set of national standards for fuel economy and emissions. This will produce far less expensive cars for the consumer, and because new cars are safer, this action will make the U.S. fleet substantially safer.
- **Today's action will save lives, save money for consumers, and create jobs across our nation.**
- President Trump promised the American people that his Administration would address and correct the current fuel economy and greenhouse gas emissions standards, and today, his Administration is taking steps to fulfill this promise.
- One national standard provides much-needed regulatory certainty for the automotive industry and sets the stage for the Trump Administration's final SAFE rule that would save lives and promote economic growth by reducing the price of new vehicles and helping more Americans purchase newer, cleaner, and safer cars and trucks.

#### **SAFE**

- The SAFE vehicle rule is a top priority for EPA and the Trump Administration. EPA and NHTSA career and political staff have been and continue to work diligently through the OMB review process to finalize the rule.
- When implemented, the rule will benefit all Americans by improving the U.S. fleet's fuel economy, reducing air pollution, and making new vehicles more affordable for all Americans.
- **As new vehicles are safer than ever**, ultimately, the SAFE rule will save thousands of lives and reduce the cost of a new car by **thousands of dollars, while creating jobs across our nation.**
- When finalized, this rule will be a win for all Americans.

#### **WOTUS**

- ~~Water quality will not be harmed~~ as EPA and the Army repeal the unlawful Obama Administration WOTUS rule ~~and restore longstanding and familiar Clean Water Act regulations.~~
- The previous administration's 2015 rule wasn't about water quality. It was about power – power in the hands of the federal government over farmers, developers, and landowners.
- The final Step 1 rule will end the regulatory patchwork that included implementing two competing Clean Water Act regulations, which created uncertainty across the United States.
- EPA will go forward with finalizing the Step 2 proposal that would give states and tribes more flexibility to determine how best to manage waters within their orders, in accordance with the objective and policies of the Clean Water Act.
- The proposal's new, more precise definition will ~~would~~ mean that farmers, land owners, and businesses will spend less time and money determining whether they need a federal permit and more time upgrading aging infrastructure, building homes, creating jobs, and growing crops to feed our families.

**Commented [1]:** We want to replace those as well so I wouldn't praise them.

- **This action continues President Trump’s deregulatory agenda.** Under President Trump, EPA has finalized **46 deregulatory actions**, saving Americans more than **\$3.7 billion dollars in regulatory costs**. We have an additional 45 actions in development projected to save billions more.

#### OOOOa

- Wednesday, August 28, EPA took an important step toward removing inappropriate regulatory duplication, that aims to save the oil and natural gas industry in the United States many millions of dollars in compliance costs.
- This action by EPA responds to President Trump’s *Executive Order on Promoting Energy Independence and Economic Growth*. That order directs agencies to review existing regulations that potentially “burden the development or use of domestically produced energy resources,” including oil and natural gas, and to rescind or suspend regulatory requirements if appropriate.
- Our proposal seeks to stop burdensome and costly federal regulations impacting the oil and natural gas industry that add extra cost to domestic energy production while providing minimal environmental benefit.
- Oil and gas are valuable resources, and the industry has every incentive to minimize emissions and maximize use.
- Since 1990, natural gas production in the United States has almost doubled while methane emissions across the natural gas industry have fallen by nearly 15 percent.
- Our regulations should not stifle this innovation and progress in an industry that is so vital to the U.S economy.
- **Cost Savings:**
  - The bottom line for the industry and our economy is that by rescinding inappropriate duplicate regulations, we’ll continue to provide substantial environmental protection while saving the industry millions of dollars over many years.
  - Our regulatory impact analysis estimates that the proposed amendments would save the oil and natural gas industry \$17-\$19 million a year, for a total of \$97-\$123 million from 2019 through 2025.

#### ACE

- One of President Trump’s first acts in office was to direct EPA to rescind and replace the Clean Power Plan.
- The CPP would have asked hard-working Americans to bear the cost of the previous administration’s climate plan.
- Earlier this summer we released the final Affordable Clean Energy rule.
- ACE will give states and the private sector the regulatory certainty they need to invest in new technologies and continue to provide affordable and reliable energy.
- When ACE is fully implemented, we expect to see U.S. power sector CO2 emissions fall by as much as 35% below 2005 levels and reductions in sulfur dioxide (SO2), nitrogen oxides (NOx), and particulate matter (PM) emissions.
- Unlike the CPP, our ACE rule adheres to the four corners of the Clean Air Act.
- It gives states the regulatory certainty they need to continue to develop diverse and reliable energy portfolios.

- EPA projects that ACE will result in annual net benefits of anywhere from \$120 million dollars to \$730 million dollars.

### **Superfund**

- In FY 2019, we deleted all or part of 27 sites from the National Priorities List, the largest number of deletions in one year since 2001.
- We believe that a site on the National Priorities List should be just that – a national priority.
- By strengthening the Superfund program, we are breathing new life and new opportunity into disadvantaged communities around the country.
- Promoting Redevelopment and Community Revitalization: The Superfund Task Force has worked hard to increase the number of NPL sites that are returned to communities for redevelopment. In 2018, we made 51 sites ready for their anticipated re-use, the highest total since FY 2013.

### **PFAS**

- Taking action to address per- and polyfluoroalkyl substances (PFAS) is a top priority for the Administrator, EPA leadership and the entire agency.
- The [ [HYPERLINK](https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fpfas%2Fepas-pfas-action-plan&data=02%7C01%7Cjpagliery%40univision.net%7C03174e1eafc14b53275408d7273585c0%7C91ff98f7aa664cf39617b5c4f409c51d%7C0%7C0%7C637020984266855480&sdata=N%2FJ7njtyGx2R7AUh158tbDRT9zy2j1nDe%2B2VpqrOBLU%3D&reserved=0) "https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fpfas%2Fepas-pfas-action-plan&data=02%7C01%7Cjpagliery%40univision.net%7C03174e1eafc14b53275408d7273585c0%7C91ff98f7aa664cf39617b5c4f409c51d%7C0%7C0%7C637020984266855480&sdata=N%2FJ7njtyGx2R7AUh158tbDRT9zy2j1nDe%2B2VpqrOBLU%3D&reserved=0" ] is the first-ever multi-media, multi-program, national research, management and risk communication plan to address a challenge like PFAS.
- The plan identifies short-term solutions for addressing these chemicals and long-term strategies that will help provide the tools and technologies that states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source—even before it gets into the water.
- The agency is making progress on the PFAS Action Plan by developing tools and expanding the body of scientific knowledge needed to understand and effectively manage risk from PFAS compounds.
- **Additional Background**
  - For example, the Agency is moving forward with the process to establish a national primary drinking water standard as outlined in the Safe Drinking Water Act (SDWA) for PFOA and PFOS.
  - As the next step in this process, EPA will propose a regulatory determination for PFOA and PFOS by the end of this year and will work through the rulemaking process as expeditiously as possible. The Agency is also gathering and evaluating information to determine if regulation is appropriate for other chemicals in the PFAS family.

### **Trump Administration Achievements**

- Our Nation is blessed with incredible natural resources. Resources that create jobs and improve lives.

- We know that we can extract and use these resources while protecting the environment at the same time. We don't have to choose between one or the other.
  - From 1970 to 2018, the U.S. has reduced the six main air pollutants 74% while the economy grew over 275%.
  - From 2005 to 2017, the U.S. reduced its energy-related CO2 emissions by 14%.
  - And while these reductions occurred, we became the number one oil and gas producer in the world.
  - In contrast, global energy-related CO2 emissions have increased over roughly 15% since 2005.
- On the water front, we've made similar progress.
  - Today, we are ranked number one in the world for access to clean drinking water.
  - In the 1970s, more than 40% of our nation's drinking water systems failed to meet even the most basic health standards.
  - Today, over 92% of community water systems meet all health-based standards, all the time.
- We're making tremendous progress cleaning up contaminated lands and hazardous sites.
  - In Fiscal Year 2019, EPA deleted all or part of 27 sites from the National Priorities List, the largest number of deletions in one year since Fiscal Year 2001.

#### Deregulation:

- Under President Trump, EPA has finalized **46 deregulatory actions**, saving Americans more than **\$3.7 billion dollars in regulatory costs**.
- We have an additional 45 actions in development projected to save billions more.
- And a recent report found that we were the top agency in fulfilling President Trump's two-for-one executive order.
- During his first two years in office, we cut **26 regulations** and created just **four new ones**.

#### Regulatory Certainty

- I think what is effective regulation is one that follows the law and will be held up in courts.
- We are putting forward a proposals that follows the authority Congress has given us.
- I think that is the responsible thing for the agency to do.
- I don't think it's responsible with our form of government with three branches, I don't think it's EPA's job to write the legislation on its own.
- We have to follow the statutory constraints Congress has given us, and I think we are doing that under the ACE proposal.

**Commented [ 2]:** Plural or singular? ( I thought it was plural)

#### Animal Testing:

- EPA is making significant efforts to reduce, replace and refine its animal testing requirements under both statutory and strategic directives, while ensuring protection of human health and the environment.
- EPA is aggressively pursuing significant reductions in the next 5 to 15 years to mammal studies, study requests and funding of this research.
- EPA is also awarding grants for the advancement of research on alternative methods to animal testing.

- Alternatives to traditional animal testing used by EPA will be those that ensure that the Agency's regulatory, compliance, and enforcement activities, including chemical and pesticide approvals and Agency research, remain fully protective of human health and the environment.

#### **Newark Water:**

- EPA has a long history of assisting cities including the City of Newark and states across the country address lead in drinking water.
  - For example, in the past 10 years, Newark has received multiple drinking water State Revolving Fund (DWSRF) loans totaling \$66.5 million.
- The City of Newark, the U.S. Environmental Protection Agency (EPA) and New Jersey Department of Environmental Protection (NJDEP) have been working together to determine the efficacy of the filters being used to address lead in drinking water in the Newark area.
- Since mid-August, EPA has had internationally recognized experts on-the-ground assisting with the collection and analysis of drinking water samples. The agency is also providing regular support to the city and the state, through technical calls and support.
- EPA continues to stand ready to assist the city and state as we work together as quickly as possible to resolve these issues and to ensure that all residents of Newark have access to safe drinking water.

**Commented [ 3]:** Check with David Dunlap on whether these people are on the ground.

#### **Pesticides**

- Feeding the country and feeding the world is essential. The Trump Administration is working hard to ensure U.S. farmers and ranchers have access to the best modern farming technologies so that they can continue to grow strong yields, feed the world and enhance our nation's food security.
- The federal government is working hard to ensure our farmers continue to have access to the safest & most effective pesticides, herbicides, fertilizers— among other important crop protection tools.
- The law requires EPA to review each of the over 700 commercially available registered pesticides and review/ re-register them every 15 years. In FY 219 alone, we are making 120 of these decisions to give farmers and ranchers the clarity they need surrounding the availability of these tools that are vital to production agriculture and ultimately rural economies.
- This is unlike some states across the country, like California, where for politically motivated reasons they have sought to ban scientifically-proven, otherwise safe pesticides that their own farmers and ranchers need in order to stop harmful pests and invasive plant species from ruining their yields.
- In April, we took the next step in the review process for glyphosate.
- We found – as we have before – that glyphosate is not a carcinogen and there are no risks to public health when glyphosate is used in accordance with its current label.
- On a similar front, we extended the registration of dicamba for two years, along with important new label restrictions.
- We tightened the application requirements in order to specifically help mitigate drift issues.

### Prop 65/Glyphosate Labeling

- On Friday, Aug. 9, EPA issued guidance to registrants of glyphosate to ensure clarity on labeling of the chemical on their products.
- EPA will no longer approve product labels claiming glyphosate is known to cause cancer – a false claim that does not meet the labeling requirements of the *Federal Insecticide, Fungicide, and Rodenticide Act* (FIFRA).
- The State of California’s much criticized Proposition 65 has led to misleading labeling requirements for products, like glyphosate, because it misinforms the public about the risks they are facing. This action will ensure consumers have correct information, and is based on EPA’s [ [HYPERLINK "https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0073"](https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0073) ].

### Sulfoxaflor

- **On July 12, 2019**, EPA issued a long-term approval for the insecticide sulfoxaflor— an effective tool to control challenging pests with fewer environmental impacts.
- **This will bring long-term certainty to farmers as EPA had previously been issuing emergency exemptions for its use annually for several years and only for certain crops. Clearly, the full-term registration was warranted and the science backs it up.**
- EPA conducted an extensive risk analysis on this product, including the review of one of the agency’s **largest datasets on the effects of a pesticide on bees ever**, EPA has approved the long-term use of sulfoxaflor on alfalfa, corn, cacao, grains (millet, oats), pineapple, sorghum, teff, teosinte, tree plantations, citrus, cotton, cucurbits (squash, cucumbers, watermelons, some gourds), soybeans, and strawberries.

### Executive Orders on Guidance and Enforcement

- EPA strongly support transparency and fairness. These two executive orders provide us with the opportunity to institutionalize reforms we are already implementing at the Agency. For example, the Office of Water has already completed a review of its guidance documents, including draft guidance that had never been finalized, even after 10 or more years. The Office of Enforcement and Compliance Assurance has already refreshed and expanded EPA’s self-audit programs, the encourage companies to return to compliance more quickly.

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Message

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**From:** bodine.susan@epa.gov [bodine.susan@epa.gov]  
**Sent:** 9/26/2019 4:50:19 PM  
**To:** Dennis, Allison [Dennis.Allison@epa.gov]  
**CC:** Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Hull, George [Hull.George@epa.gov]; Egan, Patrick [egan.patrick@epa.gov]  
**Subject:** Re: Urgent: LAW360 q re: CA announcement

EPA conducts oversight over state programs routinely. Do you want to send the 2017 letter on the CA variance for SF as an example?

Dischargers are supposed to monitor for compliance with water quality standards including bacteria standards.

Sent from my iPad

On Sep 26, 2019, at 9:26 AM, Dennis, Allison <[Dennis.Allison@epa.gov](mailto:Dennis.Allison@epa.gov)> wrote:

Another one.

Law360 (deadline asap) two questions:

- 1) I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?
- 2) And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

**From:** [jc.rodriguez@law360.com](mailto:jc.rodriguez@law360.com) <[jc.rodriguez@law360.com](mailto:jc.rodriguez@law360.com)>  
**Sent:** Thursday, September 26, 2019 11:47 AM  
**To:** Press <[Press@epa.gov](mailto:Press@epa.gov)>; Block, Molly <[block.molly@epa.gov](mailto:block.molly@epa.gov)>  
**Subject:** Re: EPA warning letters

And one follow up question, the letter makes reference to EPA's "concern" about the amount of human feces that ends up in the Los Angeles and San Francisco sewer systems. How does the EPA know exactly how much human feces is ending up in "nearby water" and whether that amount poses a health risk?

On Thu, Sep 26, 2019 at 11:06 AM Juan Carlos Rodriguez <[jc.rodriguez@law360.com](mailto:jc.rodriguez@law360.com)> wrote:

Hi,

I was on the call with Susan Bodine this morning, and I'd like to request information about how many of these types of letters have been sent from the EPA (either HQ or regional offices) to states about similar issues. The Washington Post reported one issued by the Obama administration to Wisconsin, but are there others?

Thank you.

--

Juan Carlos Rodriguez  
Senior Environment Reporter



A LexisNexis® Company

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111 West 19th Street  
5th Floor  
New York, NY 10011  
Office: 646-783-7197  
Cell: Ex. 6 Personal Privacy (PP)



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--

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New York, NY 10011  
Office: 646-783-7197  
Cell: Ex. 6 Personal Privacy (PP)



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Message

---

**Sent:** 10/3/2019 3:28:14 PM  
**To:** Corry Schiermeyer (schiermeyer.corry@epa.gov) [schiermeyer.corry@epa.gov]; Abboud, Michael [abboud.michael@epa.gov]; Block, Molly [block.molly@epa.gov]  
**Subject:** FW: Time Sensitive: E&E News Inquiry  
**Attachments:** SFPUC Letter.pdf

See below

---

**From:** Bodine, Susan  
**Sent:** Thursday, October 3, 2019 11:27 AM  
**To:** Hull, George <Hull.George@epa.gov>  
**Cc:** Egan, Patrick <egan.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Subject:** FW: Time Sensitive: E&E News Inquiry

Mostly from desk statement. Approved by Lee in OW also:

The Administrator's September 26 letter to Governor Newsom is an oversight letter to the State about their implementation of the Clean Water Act and the Safe Drinking Water Act. EPA Region 9 issued a Notice of Violation on October 2 to the San Francisco Public Utilities Commission, a regulated entity, about Clean Water Act violations identified by EPA through inspections and field visits in 2015 and 2016, and subsequently gathered information, such as monitoring data. As the notice explains, the failure to properly operate and maintain the City's sewage collection and treatment facilities creates public health risks. For example, lack of proper operation and maintenance has caused force main and pump station failures that have diverted substantial volumes of raw and partially-treated sewage to flow across beaches and into the San Francisco Bay and the Pacific Ocean. Oversight of State program implementation and oversight of regulated entities are separate issues. EPA expects San Francisco to share its concern for the protection of public health and surface water resources and to address its ongoing Clean Water Act violations with significant and meaningful measures to ensure a prompt return to full compliance. EPA retains its enforcement authority in authorized states and can act if needed. Renewal of a permit that authorizes discharges and violations of that permit also are separate issues. On September 9, 2019, the San Francisco Public Utilities Commission elevated its concerns about the draft permit renewal to the Region 9 Regional Administrator. The concerns articulated in that letter included the Commission's interpretation of the 1994 Combined Sewer Overflow Policy and an objection to permit terms requiring compliance with water quality standards. Those issues implicate matters of national consistency and are under review by EPA.

The September 9 letter is attached.

---

**From:** Hull, George <Hull.George@epa.gov>  
**Sent:** Thursday, October 3, 2019 8:53 AM  
**To:** Bodine, Susan <bodine.susan@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>  
**Cc:** Egan, Patrick <egan.patrick@epa.gov>  
**Subject:** Time Sensitive: E&E News Inquiry

Susan and Larry,

Late yesterday, OPA sent us the inquiry below from E&E News related to San Francisco wastewater. Region 9 recommended that OECA and OW are better positioned to respond. The reporter is asking for our response by 11:30 am this morning. I sent to WED late last night. Joe Theis responded this morning. He recommended: "We should refer the permitting question to OW. With respect to the NOV questions, I would recommend that we provide the standard

response that we do not comment on ongoing enforcement matters. I assume you will be checking in with Susan this morning on this, let us know if she thinks a different response is appropriate.”

I’m on my way into the office and will see you at our 9:30 meeting. Thanks, George

**E&E Inquiry:**

Hope you’re doing well. I’m working on a follow-up article to EPA Admin. Wheeler’s letter to California last week. In particular, I’m focusing on the ongoing permit review for the Oceanside Wastewater Treatment Plant which was mentioned a few times in the background press briefing as an example of EPA’s concerns regarding California’s oversight. I had a few questions.

- On Sept. 11 EPA staff told the San Francisco Regional Water Quality Control Board that the agency supported the permit as drafted. (You can view a livestream of that meeting here: <https://cal-span.org/unipage/index.php?site=cal-span&owner=RWQCB-SF&date=2019-09-11>). The board approved the permit largely unedited. What changed between Sept. 11 and Sept. 26, when the senior EPA official told reporters the agency was concerned about California’s oversight of that specific permit and San Francisco’s efforts to push back against it?
- Why hasn’t EPA signed off on the Oceanside permit?
- Who at EPA is reviewing the permit? Is this issue still at Region 9 or has it been transferred to headquarters?
- I’m also curious about the timing of EPA Region 9’s Notice of Violation against San Francisco PUC issued today for a slew of wastewater-related concerns. How long has EPA been working on that notice? I was under the impression that California had 30 days to respond to Admin. Wheeler’s letter before EPA took further action.
- Why weren’t the Oceanside violations included in R9’s notice today addressed as part of the permitting process for that treatment plant?

Message

---

**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 12:42:07 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Scratch that. Missed your attachment.

Sent from my iPad

> On Sep 25, 2019, at 8:12 AM, Ross, David P <ross.davidp@epa.gov> wrote:  
>  
> As I open this up this morning, are you saying you already made these changes in your last redline?  
>  
> Sent from my iPhone  
>  
>> On Sep 24, 2019, at 11:31 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>>  
>> For your consideration. The groundwater rule is not numeric so I don't think we should say "exceedance"  
>> Deleted the data concerns sentence also - too minor. Not a basis for withdrawing authorization.  
>>  
>> I looked at the permits again and realized the Bay side permit was issued in 2008 (the oceanside was 2009).  
>>  
>> However, according to CA's letter objecting to the updated oceanside permit, their permits have not changed much since 1997.  
>>  
>>  
>> -----Original Message-----  
>> From: Ross, David P <ross.davidp@epa.gov>  
>> Sent: Tuesday, September 24, 2019 11:07 PM  
>> To: Benevento, Douglas <benevento.douglas@epa.gov>  
>> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
>> Subject: Re: Cal Letter and Press Release  
>>  
>> Ok thanks. I will work with Mel in the morning to look for the issues Susan has raised and insert my few additional edits and then Mel will get it to Beth for signature. Thanks all.  
>>  
>> Sent from my iPad  
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>>> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>>  
>>> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>>>  
>>> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>>>  
>>> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>>>  
>>> -----Original Message-----  
>>> From: Ross, David P <ross.davidp@epa.gov>  
>>> Sent: Tuesday, September 24, 2019 10:24 PM  
>>> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
>>> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
>>> Subject: Re: Cal Letter and Press Release  
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>>> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
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>>>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>>>>

>>>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

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>>>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

>>>>

>>>> The NOV will not go until next week - is the target Thursday?

>>>>

>>>> I need a copy of the signed letter before I talk to press.

>>>>

>>>> -----Original Message-----

>>>> From: Benevento, Douglas <benevento.douglas@epa.gov>

>>>> Sent: Tuesday, September 24, 2019 7:24 PM

>>>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

>>>> Subject: Re: Cal Letter and Press Release

>>>>

>>>> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>>>>>

>>>>> Doug

>>>>>

>>>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

>>>>>

>>>>> Lee

>>>>>

>>>>> Sent from my iPhone

>>>>>

>>>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

>>>>>>

>>>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>>>>

>>>>>> -----Original Message-----

>>>>>> From: Ross, David P <ross.davidp@epa.gov>

>>>>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>>>>> Subject: Cal Letter and Press Release

>>>>>>

>>>>>> Deliberative; Pre-Decisional

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>>>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

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>>>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

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>>>>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

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>>>>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

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>>>>>>

>>>>>> I'm turning my attention to the TPs now.

>>>>>>

>>>>>> Sent from my iPad

>>>> <Water TPs spb edits.docx>

>>> <California Water Letter - Final - September, 2019.docx>

>> <California Water Letter - Final - September 2019 spb.docx>

Message

---

**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 1:47:42 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Thanks.

Sent from my iPad

> On Sep 25, 2019, at 9:47 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

>

> Correct.

>

> And disregard the statement about the Bay side permit being from 2008. I found reference to the 2013 renewal of the 2008 permit.

>

> -----Original Message-----

> From: Ross, David P <ross.davidp@epa.gov>

> Sent: Wednesday, September 25, 2019 9:34 AM

> To: Bodine, Susan <bodine.susan@epa.gov>

> Subject: Re: Cal Letter and Press Release

>

> I agree with your redlines and will incorporate some additional clean up on top of them and get this re-signed. To be clear, your last two sentences below are more for my awareness - I didn't see edits associated with them. Right?

>

> Sent from my iPad

>

>> On Sep 24, 2019, at 11:31 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

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>> For your consideration. The groundwater rule is not numeric so I don't think we should say "exceedance"

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>> Sent: Tuesday, September 24, 2019 11:07 PM

>> To: Benevento, Douglas <benevento.douglas@epa.gov>

>> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>

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>>>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>  
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>>>> <Water TPs spb edits.docx>

>>> <California Water Letter - Final - September, 2019.docx>

>> <California Water Letter - Final - September 2019 spb.docx>

September 17, 2019

:

The Environmental Protection Agency and California EPA are responsible for working together to protect public health and the environment in your State. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with U.S. EPA overseeing state actions. Based upon data and reports, the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the State must take to address them. In order to ensure that appropriate steps are being taken to protect Californians EPA would like a remedial plan from the State detailing the steps it is taking to address the issues raised below.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

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<sup>1</sup> EPA first authorized California's the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ [HYPERLINK "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces"](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) ] (last accessed Sept. 4, 2019).

<sup>3</sup> Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at* [ [HYPERLINK "https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html"](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html) ] (last accessed September 22, 2019).



Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The State is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only, and do not always achieve even that low level of treatment. These discharges may be contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by

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<sup>4</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" \]](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa)).

CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious ~~matters violations~~ that warrant a strong review by California. ~~Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.~~

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>5</sup> ~~compliance issues~~exceedances,<sup>6</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 ~~exceedances violations~~ of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

---

<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based ~~concerns violations~~ are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Message

---

**From:** Forsgren.Lee@epa.gov [Forsgren.Lee@epa.gov]  
**Sent:** 9/25/2019 1:22:25 PM  
**To:** Ross, David P [ross.davidp@epa.gov]  
**CC:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Will be available then. Call me.

Sent from my iPhone

On Sep 25, 2019, at 6:20 AM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

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**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
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**Cc:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Mejias, Melissa"

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To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan

<jackson.ryan@epa.gov>

Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee

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he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

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September 24, 2019  
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Cc: Mejias, Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Cal Letter and  
Press Release

Deliberative; Pre-  
Decisional

On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this

paragraph if the air was  
subject to a different  
letter?

In the paragraph that  
starts with "Overall" on  
the second page, I'd  
delete the clause "with  
little to no oversight"  
unless we have factual  
support for that  
statement. It isn't  
needed in any event.

In the next para, after  
the Marin County  
sentence, change  
"violations" to "issues"  
in the next sentence to  
make it align with  
Susan's appropriate  
focus on being careful  
about overstating legal  
conclusions in this  
letter.

On the press release, I  
agree with Susan's  
edits. I'd also flag the  
word "disastrous". I  
would delete or use a  
less pointed adjective  
as the sentence is  
commenting on  
homelessness policies,  
not environmental  
policies.

I'm turning my  
attention to the TPs  
now.

Sent from my iPad

<Water TPs spb edits.docx>

<California Water Letter - Final - September 2019 spb.pdf>



Message

---

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**Sent:** 9/25/2019 1:35:26 PM  
**To:** Ross, David P [ross.davidp@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

I'm reading. Calling in now.

Sent from my iPad

On Sep 25, 2019, at 9:34 AM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

I've opened up a line – number in calendar. Call when ready.

---

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Cc: Benevento, Douglas  
<benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
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7:24 PM

To: Forsgren, Lee  
<[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Ross, David P  
<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Mejias,  
Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Re: Cal Letter and Press  
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going  
to have  
to  
revise it  
and get  
a new  
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Ryan,  
I'm in  
Seattle  
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Original  
Messag  
e-----

From:  
Ross,  
David P  
<[ross.d  
avidp@  
epa.gov](mailto:ross.davidp@epa.gov)  
>

Sent:  
Tuesda  
y,  
Septem  
ber 24,  
2019  
2:22  
PM

To:  
Beneve  
nto,  
Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)  
>;

Bodine,  
Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)  
>;

Forsgre  
n, Lee  
<[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)  
>

Cc:  
Mejias,  
Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)  
>

Subject:  
Cal  
Letter  
and  
Press  
Release

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t letter?

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Susan's  
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focus  
on  
being  
careful  
about  
oversta-  
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legal  
conclus-  
ions in  
this  
letter.

On the  
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release,  
I agree  
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I'm  
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my

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Sent  
from  
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<Water TPs spb edits.docx>

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2:22 PM

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<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>;  
Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren,  
Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Mejias, Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Cal Letter and Press Release

Deliberative; Pre-Decisional

On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

I'm turning my attention to the TPs now.

Sent from my iPad

<Water TPs spb edits.docx>

<California Water Letter - Final - September 2019 spb.pdf>

Message

---

**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 9/25/2019 1:18:32 PM  
**To:** Ross, David P [ross.davidp@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September 2019 spb.pdf

The version Susan sent last night attached – this is the latest version! She made edits off of the version Doug circulated last night and I sent you yesterday at 11:02pm. Spoke to Susan and she agrees we have a version control problem.

---

**From:** Mejias, Melissa  
**Sent:** Wednesday, September 25, 2019 8:53 AM  
**To:** Ross, David P <ross.davidp@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

Please give me a second to confirm all the above.

---

**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Wednesday, September 25, 2019 8:45 AM  
**To:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: Cal Letter and Press Release

So just to be clear. This is the most recent version, which matches the one you sent me in PDF at 11:02 last night. And hopefully this is the one that Susan sent redlines on last night at 11:31 pm, which I forwarded you this morning. Please confirm.

Sent from my iPad

Begin forwarded message:

**From:** "Benevento, Douglas" <benevento.douglas@epa.gov>  
**Date:** September 24, 2019 at 10:54:20 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Mejias, Melissa" <mejias.melissa@epa.gov>, "Schiermeyer, Corry" <schiermeyer.corry@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.

Get it to Beth White who can put it on letterhead and get it turned around by noon.

Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.

-----Original Message-----



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Sent: Tuesday, September 24, 2019 10:24 PM  
To: Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>  
Cc: Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>;  
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Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

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Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
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Sent from my iPhone

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Doug

I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

Lee

Sent from my iPhone

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Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

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<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>; Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren, Lee  
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Cc: Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

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September 17, 2019

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The Environmental Protection Agency and California EPA are responsible for working together to protect public health and the environment in your State. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal Clean Water Act (CWA), and Safe Drinking Water Act (SDWA) among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with U.S. EPA overseeing state actions. Based upon data and reports, the Agency is concerned California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the State must take to address them. In order to ensure that appropriate steps are being taken to protect Californians EPA would like a remedial plan from the State detailing the steps it is taking to address the issues raised below.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

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<sup>1</sup> EPA first authorized California's the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* <https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces> (last accessed Sept. 4, 2019).

<sup>3</sup> Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at*

Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The State is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only, and do not always achieve even that low level of treatment. These discharges may be contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

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[https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html) (last accessed September 22, 2019).

<sup>4</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool (<https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa>).

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious ~~matters violations~~ that warrant a strong review by California. ~~Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.~~

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>5</sup> ~~compliance issues~~ exceedances,<sup>6</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 ~~exceedances~~ violations of radiological standards, impacting almost 12,000 residents.

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<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based ~~concerns~~ violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Message

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**From:** Ross, David P [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 12:41:19 PM  
**To:** Mejias, Melissa [mejias.melissa@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

And please make sure she was redlining against the most recent version of the letter.

Sent from my iPad

On Sep 25, 2019, at 8:40 AM, Ross, David P <ross.davidp@epa.gov> wrote:

Can you send me this attachment in PDF?

Sent from my iPad

Begin forwarded message:

**From:** "Bodine, Susan" <bodine.susan@epa.gov>  
**Date:** September 24, 2019 at 11:31:58 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

For your consideration. The groundwater rule is not numeric so I don't think we should say "exceedance"  
Deleted the data concerns sentence also - too minor. Not a basis for withdrawing authorization.

I looked at the permits again and realized the Bay side permit was issued in 2008 (the oceanside was 2009).

However, according to CA's letter objecting to the updated oceanside permit, their permits have not changed much since 1997.

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>  
Sent: Tuesday, September 24, 2019 11:07 PM  
To: Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Subject: Re: Cal Letter and Press Release

Ok thanks. I will work with Mel in the morning to look for the issues Susan has raised and insert my few additional edits and then Mel will get it to Beth for signature. Thanks all.

Sent from my iPad



On Sep 24, 2019, at 10:54 PM, Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)> wrote:

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Doug

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Deliberative; Pre-  
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September 17, 2019

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Francisco, Los Angeles and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The State is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the City into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches, and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice—allowed by CalEPA—of routinely discharging over one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only, and do not always achieve even that low level of treatment. These discharges may be contributing to the State's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the City allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the State has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the State's years long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The City's practices endanger public health and EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the City into compliance.

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[https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html) (last accessed September 22, 2019).

<sup>4</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool (<https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa>).

The State's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued NPDES permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California.

California has the resources to address these problems. Apart from the State's significant tax base, California received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received over \$152 million in categorical grants over this time to improve compliance with the CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based exceedances: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>5</sup> exceedances,<sup>6</sup> impacting over 250,000 residents.
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

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<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.



\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Message

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**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 9/25/2019 2:40:52 AM  
**To:** Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** RE: Cal Letter and Press Release

Dave and Lee – I know we don't have the latest version of the PR. I'll work on get my hands on the latest version of both documents and make it known we are making edits to the latest and no other copies should be circulated.

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**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Tuesday, September 24, 2019 10:26 PM  
**To:** Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
**Subject:** Fwd: Cal Letter and Press Release

I don't know what you have in the morning, but until we get this cleared up, this has to be the priority. Thanks.

Sent from my iPad

Begin forwarded message:

**From:** "Ross, David P" <ross.davidp@epa.gov>  
**Date:** September 24, 2019 at 10:23:55 PM EDT  
**To:** "Bodine, Susan" <bodine.susan@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Benevento, Douglas" <benevento.douglas@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Mejias, Melissa" <mejias.melissa@epa.gov>  
**Subject:** Re: Cal Letter and Press Release

Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

Sent from my iPad

On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.

On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

The NOV will not go until next week - is the target Thursday?

I need a copy of the signed letter before I talk to press.

-----Original Message-----

From: Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>

Sent: Tuesday, September 24, 2019 7:24 PM

To: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>;  
Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Re: Cal Letter and Press Release

Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

Sent from my iPhone

On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)> wrote:

Doug

I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

Lee

Sent from my iPhone

On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)> wrote:

Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

-----Original Message-----

From: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Sent: Tuesday, September 24, 2019 2:22 PM

To: Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>; Bodine, Susan

<bodine.susan@epa.gov>; Forsgren, Lee  
<Forsgren.Lee@epa.gov>

Cc: Mejias, Melissa <mejias.melissa@epa.gov>

Subject: Cal Letter and Press Release

Deliberative; Pre-Decisional

On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

I'm turning my attention to the TPs now.

Sent from my iPad

<Water TPs spb edits.docx>

Message

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**From:** Fotouhi.David@epa.gov [Fotouhi.David@epa.gov]  
**Sent:** 9/6/2019 12:49:24 AM  
**To:** Schwab, Justin [Schwab.Justin@epa.gov]  
**Subject:** Fwd: Draft California Letter  
**Attachments:** California Letter - Revised (002).docx; ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Fotouhi, David" <Fotouhi.David@epa.gov>  
**Date:** September 5, 2019 at 8:20:33 PM EDT  
**To:** "Benevento, Douglas" <benevento.douglas@epa.gov>  
**Cc:** "Matthew Leopold (Leopold.Matt@epa.gov)" <Leopold.Matt@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Subject:** Draft California Letter

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Hi, Doug.

Attached is a draft letter to California identifying deficiencies in the State's CWA and SDWA programs. In assembling the letter, I worked from the draft letter that Lee provided to me as well as the background materials you sent. Matt has reviewed the letter and his comments are reflected in this draft. I defer to you as to who else should review, although I included one comment in the draft identifying a statement taken from the background materials that OECA should confirm it is comfortable with including.

The draft does not currently include a paragraph on Clean Air Act issues, as I learned today that there may be a separate letter in process addressing Clean Air Act issues specifically. If that's not the case, Clint has drafted a paragraph that could be included (with some modification to ensure that the statements are not interpreted as decisions on any particular pending SIP). Let me know and I will get this paragraph to you.

Let me know if you have any questions or need anything else. Thank you.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

[DATE]

Hon. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, California 95812

Dear Secretary Blumenfeld:

Our Agencies are responsible for working to protect California's environment and the health of the citizens of your state. As a result of the delegation of federal authority, California administers and implements many federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress designed these statutory frameworks intentionally with States taking the lead role in implementing the laws, and the U.S. Environmental Protection Agency overseeing the State's actions. Today, I write to express the Agency's serious concerns about several shortcomings in California's administration of its responsibilities under these statutes and request your immediate attention to remedy these problems.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.

Even more troubling is the City of San Francisco's years-long practice—under the auspices of CalEPA's approval—of routinely discharging large quantities of untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean. The Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards; nonetheless, California has authorized San Francisco's discharges in a permit issued under California's authorized state Clean Water Act program. This practice endangers public health, and as a result EPA has begun

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<sup>1</sup> EPA first approved California's assumption of the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. California also has received primacy to exercise Safe Drinking Water Act responsibilities in the State.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ [HYPERLINK](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" ] (last accessed Sept. 4, 2019).

the enforcement process against the City. San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. To be sure, EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, the State is not acting quickly enough to abate this public health and environmental problem, and we are proceeding with our enforcement efforts. The State's approval of these discharges under its authorized Clean Water Act program raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>3</sup>

**Commented [FD1]:** OECA should confirm whether this should be disclosed

The State's lack of action in response to the homelessness crisis and San Francisco's illegal discharges of untreated sewage appears to plague other programs administered by CalEPA. For instance, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

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<sup>3</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. This data is publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([[HYPERLINK](https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa) "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" ]).

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE  
DRAFT—SEPTEMBER 5, 2019

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Andrew R. Wheeler  
Administrator

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<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.



Message

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**Sent:** 9/6/2019 12:01:54 AM  
**To:** Benevento, Douglas [benevento.douglas@epa.gov]  
**CC:** Matthew Leopold (Leopold.Matt@epa.gov) [Leopold.Matt@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Draft California Letter  
**Attachments:** California Letter - Revised (002).docx

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Hi, Doug.

Attached is a draft letter to California identifying deficiencies in the State's CWA and SDWA programs. In assembling the letter, I worked from the draft letter that Lee provided to me as well as the background materials you sent. Matt has reviewed the letter and his comments are reflected in this draft. I defer to you as to who else should review, although I included one comment in the draft identifying a statement taken from the background materials that OECA should confirm it is comfortable with including.

The draft does not currently include a paragraph on Clean Air Act issues, as I learned today that there may be a separate letter in process addressing Clean Air Act issues specifically. If that's not the case, Clint has drafted a paragraph that could be included with some modification to ensure that the statements are not interpreted as decisions on any particular pending SIP. Let me know and I will provide this to you.

Let me know if you have any questions or need anything else. Thank you.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

Message

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**From:** Leopold, Matt (OGC) [Leopold.Matt@epa.gov]  
**Sent:** 9/5/2019 11:40:43 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]  
**Subject:** RE: Draft California letter  
**Attachments:** California Letter - Revised (002).docx

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

See attached edits.

**Matthew Z. Leopold**  
General Counsel  
U.S. Environmental Protection Agency  
(202) 564-8040

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**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Thursday, September 5, 2019 3:39 PM  
**To:** Leopold, Matt (OGC) <Leopold.Matt@epa.gov>  
**Subject:** RE: Draft California letter

Matt, in case you haven't started reviewing yet, attached is a revised version of the draft letter. I've made some changes in light of a conversation with Lee (mainly removing the paragraph on Compton water issues because of some recent developments) and removing the Air Act paragraph in light of our discussion this morning.

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

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**From:** Fotouhi, David  
**Sent:** Wednesday, September 4, 2019 9:06 PM  
**To:** Matthew Leopold ([Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)) <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>  
**Subject:** Draft California letter

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Matt: Attached is a draft letter to California regarding certain CWA, SDWA, and CAA issues. This draft refers to factual and technical information provided to me by Doug from OECA, OW, and OAR—I have not independently verified the accuracy of this information. Please let me know if you have comments or suggestions. If you are okay with the approach, I plan to circulate to Doug as well as OECA, OW, and OAR for review. Doug informed me that he intends to provide a draft to the Administrator before Monday. Happy to discuss tomorrow.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel

Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

[DATE]

Hon. Jared Blumenfeld  
Secretary of the Environment  
California Environmental Protection Agency  
101 I Street  
P.O. Box 2815  
Sacramento, California 95812

Dear Secretary Blumenfeld:

Our Agencies are responsible for working to protect California's environment and the health of the citizens of your state ~~who live and work within its borders. As part of this effort, As a result of the delegation of federal authority,~~ California administers and implements many federal Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) permitting and enforcement programs and other requirements.<sup>1</sup> Congress ~~built designed~~ these statutory frameworks ~~on a foundation of State action and federal oversight,~~ intentionally with States taking the lead role in implementing the laws, and the U.S. Environmental Protection Agency overseeing the State's actions. Today, I write to express the Agency's serious concerns about several shortcomings in California's administration of its responsibilities under these statutes and request your immediate attention to remedy these problems.

The Agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco. Indeed, press reports<sup>2</sup> indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common. EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. San Francisco and the State do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.

Even more troubling is the City of San Francisco's years-long practice—under the auspices of CalEPA's approval—of routinely discharging large quantities of untreated and partially treated sewage into San Francisco Bay and the Pacific Ocean. The Clean Water Act requires municipal sewage to be treated to certain levels and to meet water quality standards; nonetheless, California has authorized San Francisco's discharges in a permit issued under California's authorized state

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<sup>1</sup> EPA first approved California's assumption of the base Clean Water Act program in 1973. EPA subsequently approved the State to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989, and issue general permits in 1989. EPA approved California's base Safe Drinking Water Act program in xxxx.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, NPR (Aug. 1, 2018) *available at* [ [HYPERLINK](https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces) "https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces" ] (last accessed Sept. 4, 2019).

Clean Water Act program. This practice endangers public health, and because as a result EPA considers San Francisco to be in violation of the Clean Water Act, the Agency is inhas begun the enforcement process of negotiating a consent decree withagainst the City. San Francisco is one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. To be sure, EPA is committed to helping the State address this problem. In fact, EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act (WIFIA) in July 2018 for biosolid digestors and other related projects. However, the State is not acting quickly enough to abate this public health and environmental problem, and we are proceeding with our enforcement efforts to put San Francisco under a judicially enforceable obligation to comply with federal law. The State's approval of these discharges under its authorized Clean Water Act program raises serious questions as to whether your Agency is administering this program in a manner consistent with federal law.<sup>3</sup>

Commented [FD1]: OECA should confirm whether this can/should be disclosed here

The State's lack of action in response to the homelessness crisis and San Francisco's illegal discharges of untreated sewage appears to plague other programs administered by CalEPA. For instance, we are aware of numerous violations of state-issued NPDES permits under section 402 of the Clean Water Act. Just in this past quarter, we have identified 23 significant instances of discharges into waters of the United States in violation of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and the Sanity District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations and could indicate a lapse in the State's obligation under its CWA authorization to administer the NPDES program in a manner that meets federal requirements. Moreover, EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations, and enforcement actions submitted to EPA by California. For example, many stormwater inspection reports submitted by your Agency lack even the most basic of documentation, such as the date the document was finalized or delivered to the facility.

California has the resources to address these problems. Apart from the State's significant tax base, California has received over \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California has received over \$152 million in categorical grants over this time to improve compliance with CWA.

<sup>3</sup> EPA's current data also indicates that 15 major Publicly Owned Treatment Works (POTWs) are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. This data is publicly available. See U.S. EPA, Enforcement and Compliance History Online (ECHO) water facility public search tool ([ HYPERLINK "https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa" ] ).

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DRAFT—SEPTEMBER 4, 2019

EPA also has concerns about CalEPA's administration and oversight of Safe Drinking Water Act (SDWA) programs and public water systems within the State. Indeed, we are aware of numerous recent health-based violations: in just the most-recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based violations that put at risk the drinking water of nearly 800,000 residents. These violations include:

- 67 systems with 194 serious health-based violations of arsenic levels, impacting over 101,000 residents.
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting over 10,000 residents.
- 2 systems with serious Ground Water Rule<sup>4</sup> violations,<sup>5</sup> impacting over 250,000 residents.
- 44 systems with 154 violations of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents.
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

These violations call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

\* \* \*

Under this Administration, EPA stands ready to assist California and CalEPA protect the health and environment of Californians. However, it is time for the State to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response by [DATE] outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the State has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Best Regards,

Andrew R. Wheeler  
Administrator

---

<sup>4</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>5</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

Message

---

**From:** Wehling, Carrie [Wehling.Carrie@epa.gov]  
**Sent:** 9/26/2019 6:36:33 PM  
**To:** Fotouhi, David [Fotouhi.David@epa.gov]  
**CC:** Neugeboren, Steven [Neugeboren.Steven@epa.gov]  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure  
**Attachments:** 9.26.19\_letter-epa.pdf

The letter is unclear to me but might be suggesting, at least under SDWA, the initiation of withdrawal proceedings (including the 30 day timeframe for response to a notice of deficiency) – just wondering if you know whether that was the intent. It's a much less formal process under SDWA PWS than under NPDES, so more easily triggered and completed.

Thanks.

Carrie

Caroline (Carrie) Wehling  
Assistant General Counsel  
Water Law Office  
U.S. Environmental Protection Agency  
Washington DC 20004  
202-564-5492  
wehling.carrie@epa.gov

---

**From:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Sent:** Thursday, September 26, 2019 1:05 PM  
**To:** OGC WLO <OGC\_WLO@epa.gov>  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure

For your awareness. I was not previously aware of this.

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

---

**From:** Fotouhi, David <Fotouhi.David@epa.gov>  
**Sent:** Thursday, September 26, 2019 12:07 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure

FYSA

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

**From:** EPA Press Office <[press@epa.gov](mailto:press@epa.gov)>

**Sent:** Thursday, September 26, 2019 10:30 AM

**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** EPA Administrator Wheeler calls out California's Environmental Protection Failure



U.S. ENVIRONMENTAL PROTECTION AGENCY  
**NEWS RELEASE**  
WWW.EPA.GOV/NEWSROOM

## **EPA Administrator Wheeler calls out California's Environmental Protection Failure**

*State's homelessness crisis threatens human health and the environment*

**WASHINGTON** (Sept. 26, 2019) — Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent a letter to California Governor Gavin Newsom raising several issues with the state's failure to protect Californians from degraded water, outlining deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.

"California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations," **said EPA Administrator Andrew Wheeler**. "If California does not step up to its delegated responsibilities, then EPA will be forced to take action."

For years, California has pushed policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973; however, the state's recent lack of urgency addressing serious issues in San Francisco resulting from lack of proper oversight and enforcement is concerning. This, among other issues identified in the administrator's letter, is a failure to properly implement federal programs and has resulted in the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state's years long approval of the discharges of over 1 billion gallons per year of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources - which includes a significant tax base and EPA providing over \$1 billion in



federal grants and a \$699 million loan through the Water Infrastructure Finance and Innovation Act - San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and deficiencies identified in the letter.

To read the full letter, click [here](#).

For more information about EPA's clean water programs, click [here](#).

Visit The EPA's  
Newsroom



U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20004

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[Unsubscribe](#)

Message

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**From:** Fotouhi, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEBAF0D56AAB43F8A9174B18218C1182-FOTOUHI, DA]  
**Sent:** 9/6/2019 12:49:25 AM  
**To:** Schwab, Justin [Schwab.Justin@epa.gov]  
**Subject:** Fwd: Draft California Letter  
**Attachments:** California Letter - Revised (002).docx; ATT00001.htm

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Fotouhi, David" <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Date:** September 5, 2019 at 8:20:33 PM EDT  
**To:** "Benevento, Douglas" <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>  
**Cc:** "Matthew Leopold ([Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov))" <[Leopold.Matt@epa.gov](mailto:Leopold.Matt@epa.gov)>, "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** Draft California Letter

PRIVILEGED—DELIBERATIVE—DO NOT RELEASE

Hi, Doug.

Attached is a draft letter to California identifying deficiencies in the State's CWA and SDWA programs. In assembling the letter, I worked from the draft letter that Lee provided to me as well as the background materials you sent. Matt has reviewed the letter and his comments are reflected in this draft. I defer to you as to who else should review, although I included one comment in the draft identifying a statement taken from the background materials that OECA should confirm it is comfortable with including.

The draft does not currently include a paragraph on Clean Air Act issues, as I learned today that there may be a separate letter in process addressing Clean Air Act issues specifically. If that's not the case, Clint has drafted a paragraph that could be included (with some modification to ensure that the statements are not interpreted as decisions on any particular pending SIP). Let me know and I will get this paragraph to you.

Let me know if you have any questions or need anything else. Thank you.

Best,

David

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

Message

---

**From:** Grantham.Nancy@epa.gov [Grantham.Nancy@epa.gov]  
**Sent:** 9/25/2019 7:50:52 PM  
**To:** Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**CC:** Abboud, Michael [abboud.michael@epa.gov]; Block, Molly [block.molly@epa.gov]; McFaul, Jessica [mcfaul.jessica@epa.gov]; Beach, Christopher [beach.christopher@epa.gov]; Woods, Andrea [Woods.Andrea@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Can do

Sent from my iPhone

> On Sep 25, 2019, at 3:48 PM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:  
>  
> We need to have this posted to the website at 10:30amET tomorrow.  
>  
>  
> -----Original Message-----  
> From: Jackson, Ryan <jackson.ryan@epa.gov>  
> Sent: Wednesday, September 25, 2019 3:33 PM  
> To: Ross, David P <ross.davidp@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Block, Molly <block.molly@epa.gov>  
> Cc: Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
> Subject: RE: Cal Letter and Press Release  
>  
> Attached is the final, signed letter.  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Wednesday, September 25, 2019 10:04 AM  
> To: Benevento, Douglas <benevento.douglas@epa.gov>  
> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>  
> FYI. I have worked with Susan to give this a comprehensive review and clean up edit. Mel, Lee and I just reviewed those edits, and Mel will be putting this into a final version to pass on to the AO shortly.  
>  
> Thanks all.  
>  
> Sent from my iPad  
>  
>> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>  
>> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>>  
>> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>>  
>> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>>  
>> -----Original Message-----  
>> From: Ross, David P <ross.davidp@epa.gov>  
>> Sent: Tuesday, September 24, 2019 10:24 PM  
>> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
>> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
>> Subject: Re: Cal Letter and Press Release  
>>  
>> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
>>  
>> Sent from my iPad  
>>  
>>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

>>>  
>>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>>>  
>>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.  
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>>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.  
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>>> The NOV will not go until next week - is the target Thursday?  
>>>  
>>> I need a copy of the signed letter before I talk to press.  
>>>  
>>> -----Original Message-----  
>>> From: Benevento, Douglas <benevento.douglas@epa.gov>  
>>> Sent: Tuesday, September 24, 2019 7:24 PM  
>>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>  
>>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
>>> Subject: Re: Cal Letter and Press Release  
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>>> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.  
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>>> Sent from my iPhone  
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>>>> Doug  
>>>>  
>>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.  
>>>>  
>>>> Lee  
>>>>  
>>>> Sent from my iPhone  
>>>>  
>>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>>>>  
>>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.  
>>>>>  
>>>>> -----Original Message-----  
>>>>> From: Ross, David P <ross.davidp@epa.gov>  
>>>>> Sent: Tuesday, September 24, 2019 2:22 PM  
>>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
>>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>  
>>>>> Subject: Cal Letter and Press Release  
>>>>>  
>>>>> Deliberative; Pre-Decisional  
>>>>>  
>>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:  
>>>>>  
>>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?  
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>>>>>  
>>>>> I'm turning my attention to the TPs now.  
>>>>>  
>>>>> Sent from my iPad  
>>>>> <Water TPs spb edits.docx>  
>>>>> <California Water Letter - Final - September, 2019.docx>  
>>>>> <image2019-09-25-035805.pdf>



Message

---

**From:** Grantham.Nancy@epa.gov [Grantham.Nancy@epa.gov]  
**Sent:** 9/26/2019 1:14:50 PM  
**To:** Dennis, Allison [Dennis.Allison@epa.gov]  
**CC:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** image2019-09-25-035805.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Schiermeyer, Corry" <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>  
**Date:** September 25, 2019 at 3:48:07 PM EDT  
**To:** "Grantham, Nancy" <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Cc:** "Abboud, Michael" <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>, "Block, Molly" <[block.molly@epa.gov](mailto:block.molly@epa.gov)>, "McFaul, Jessica" <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>, "Beach, Christopher" <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>, "Woods, Andrea" <[Woods.Andrea@epa.gov](mailto:Woods.Andrea@epa.gov)>  
**Subject:** FW: Cal Letter and Press Release

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Cc: Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>  
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<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Sent: Tuesday, September 24, 2019  
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To: Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>;  
Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren,  
Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Mejias, Melissa  
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Subject: Cal Letter and Press Release

Deliberative; Pre-Decisional

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Sent from my iPad

<Water TPs spb edits.docx>

<California Water Letter - Final - September, 2019.docx>

Message

---

**From:** Abboud, Michael [abboud.michael@epa.gov]  
**Sent:** 9/25/2019 7:47:47 PM  
**To:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Subject:** FW: Cal Letter and Press Release  
**Attachments:** image2019-09-25-035805.pdf

-----Original Message-----

From: Jackson, Ryan <jackson.ryan@epa.gov>  
Sent: Wednesday, September 25, 2019 3:33 PM  
To: Ross, David P <ross.davidp@epa.gov>; Benevento, Douglas <benevento.douglas@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>; McFaul, Jessica <mcfaul.jessica@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Block, Molly <block.molly@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Subject: RE: Cal Letter and Press Release

Attached is the final, signed letter.

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From: Ross, David P <ross.davidp@epa.gov>  
Sent: Wednesday, September 25, 2019 10:04 AM  
To: Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
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> Sent: Tuesday, September 24, 2019 10:24 PM  
> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
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>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
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>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>  
>>>> Subject: Cal Letter and Press Release  
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>>>> Deliberative; Pre-Decisional  
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>>>> Sent from my iPad  
>> <Water TPs spb edits.docx>  
> <California Water Letter - Final - September, 2019.docx>

Message

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**From:** Grantham, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY]  
**Sent:** 9/26/2019 1:14:54 PM  
**To:** Dennis, Allison [Dennis.Allison@epa.gov]  
**CC:** Grantham, Nancy [Grantham.Nancy@epa.gov]  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** image2019-09-25-035805.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

**From:** "Schiermeyer, Corry" <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>  
**Date:** September 25, 2019 at 3:48:07 PM EDT  
**To:** "Grantham, Nancy" <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>  
**Cc:** "Abboud, Michael" <[abboud.michael@epa.gov](mailto:abboud.michael@epa.gov)>, "Block, Molly" <[block.molly@epa.gov](mailto:block.molly@epa.gov)>, "McFaul, Jessica" <[mcfaul.jessica@epa.gov](mailto:mcfaul.jessica@epa.gov)>, "Beach, Christopher" <[beach.christopher@epa.gov](mailto:beach.christopher@epa.gov)>, "Woods, Andrea" <[Woods.Andrea@epa.gov](mailto:Woods.Andrea@epa.gov)>  
**Subject:** FW: Cal Letter and Press Release

We need to have this posted to the website at 10:30amET tomorrow.

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Cc: Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>  
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>>> <Water TPs spb edits.docx>  
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> <image2019-09-25-035805.pdf>

Message

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**From:** Quast, Sylvia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FE20025C1DDA47CE92E19F6C3C440C90-SQUAST]  
**Sent:** 9/27/2019 11:10:57 PM  
**To:** Kermish, Laurie [Kermish.Laurie@epa.gov]; Lieben, Ivan [Lieben.Ivan@epa.gov]  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure

---

**From:** McLain, Jennifer <McLain.Jennifer@epa.gov>  
**Sent:** Thursday, September 26, 2019 3:46 PM  
**To:** Wehling, Carrie <Wehling.Carrie@epa.gov>  
**Cc:** Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Thompkins, Anita <Thompkins.Anita@epa.gov>; Darman, Leslie <Darman.Leslie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Quast, Sylvia <Quast.Sylvia@epa.gov>; Guilaran, Yu-Ting <Guilaran.Yu-Ting@epa.gov>  
**Subject:** Re: EPA Administrator Wheeler calls out California's Environmental Protection Failure

Carrie

I would like to talk with you about the potential implication you are raising. And, the potential issue of broader applicability to other states.

Jennifer

On Sep 26, 2019, at 2:30 PM, Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)> wrote:

The letter is unclear but comes very close to initiating withdrawal proceedings on the SDWA side.

Caroline (Carrie) Wehling  
Assistant General Counsel  
Water Law Office  
U.S. Environmental Protection Agency  
Washington DC 20004  
202-564-5492  
[wehling.carrie@epa.gov](mailto:wehling.carrie@epa.gov)

---

**From:** McLain, Jennifer <[McLain.Jennifer@epa.gov](mailto:McLain.Jennifer@epa.gov)>  
**Sent:** Thursday, September 26, 2019 2:21 PM  
**To:** Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Sawyers, Andrew <[Sawyers.Andrew@epa.gov](mailto:Sawyers.Andrew@epa.gov)>; Thompkins, Anita <[Thompkins.Anita@epa.gov](mailto:Thompkins.Anita@epa.gov)>  
**Cc:** Darman, Leslie <[Darman.Leslie@epa.gov](mailto:Darman.Leslie@epa.gov)>; Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Quast, Sylvia <[Quast.Sylvia@epa.gov](mailto:Quast.Sylvia@epa.gov)>  
**Subject:** RE: EPA Administrator Wheeler calls out California's Environmental Protection Failure

Thank you Carrie. I was not aware of the letter until I received it this morning along with the related WP article.

Jennifer

Jennifer L. McLain, Director  
Office of Ground Water and Drinking Water  
U.S. EPA

---

**From:** Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>  
**Sent:** Thursday, September 26, 2019 1:59 PM  
**To:** Sawyers, Andrew <[Sawyers.Andrew@epa.gov](mailto:Sawyers.Andrew@epa.gov)>; Thompsons, Anita <[Thompkins.Anita@epa.gov](mailto:Thompkins.Anita@epa.gov)>;  
McLain, Jennifer <[McLain.Jennifer@epa.gov](mailto:McLain.Jennifer@epa.gov)>  
**Cc:** Darman, Leslie <[Darman.Leslie@epa.gov](mailto:Darman.Leslie@epa.gov)>; Nalven, Heidi <[Nalven.Heidi@epa.gov](mailto:Nalven.Heidi@epa.gov)>; Quast, Sylvia  
<[Quast.Sylvia@epa.gov](mailto:Quast.Sylvia@epa.gov)>  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure

FYI in case you hadn't seen. Possible state program actions highlighted, both NPDES and PWS.  
Copying WLO state program leads, and RC R9.  
Carrie

Caroline (Carrie) Wehling  
Assistant General Counsel  
Water Law Office  
U.S. Environmental Protection Agency  
Washington DC 20004  
202-564-5492  
[wehling.carrie@epa.gov](mailto:wehling.carrie@epa.gov)

---

**From:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>  
**Sent:** Thursday, September 26, 2019 1:05 PM  
**To:** OGC WLO <[OGC\\_WLO@epa.gov](mailto:OGC_WLO@epa.gov)>  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure

For your awareness. I was not previously aware of this.

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

---

**From:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>  
**Sent:** Thursday, September 26, 2019 12:07 PM  
**To:** Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Quast, Sylvia <[Quast.Sylvia@epa.gov](mailto:Quast.Sylvia@epa.gov)>  
**Subject:** FW: EPA Administrator Wheeler calls out California's Environmental Protection Failure

FYSA

**David Fotouhi**

Principal Deputy General Counsel  
Office of General Counsel  
U.S. Environmental Protection Agency  
Tel: +1 202.564.1976  
[fotouhi.david@epa.gov](mailto:fotouhi.david@epa.gov)

**From:** EPA Press Office <[press@epa.gov](mailto:press@epa.gov)>

**Sent:** Thursday, September 26, 2019 10:30 AM

**To:** Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>

**Subject:** EPA Administrator Wheeler calls out California's Environmental Protection Failure



U.S. ENVIRONMENTAL PROTECTION AGENCY

NEWS RELEASE

[WWW.EPA.GOV/NEWSROOM](http://WWW.EPA.GOV/NEWSROOM)

## EPA Administrator Wheeler calls out California's Environmental Protection Failure

*State's homelessness crisis threatens human health and the environment*

**WASHINGTON** (Sept. 26, 2019) — Today, U.S. Environmental Protection Agency (EPA) Administrator Andrew Wheeler sent a letter to California Governor Gavin Newsom raising several issues with the state's failure to protect Californians from degraded water, outlining deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.

"California needs to fulfill its obligation to protect its water bodies and, more importantly, public health, and it should take this letter as notice that EPA is going to insist that it meets its environmental obligations," **said EPA Administrator Andrew Wheeler**. "If California does not step up to its delegated responsibilities, then EPA will be forced to take action."

For years, California has pushed policies that have resulted in a homelessness crisis that now threatens human health and the environment, with potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters. California has been responsible for implementing the water discharge permitting program under the Clean Water Act since 1973; however, the state's recent lack of urgency addressing serious issues in San Francisco resulting from lack of proper oversight and enforcement is concerning. This, among other issues identified in the administrator's letter, is a failure to properly implement federal programs and has resulted in the subsequent need for more direct EPA oversight to ensure human health and environmental protection.

Administrator Wheeler also raised concerns about the state's years long approval of the discharges of over 1 billion gallons per year of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean. Despite California having abundant financial resources - which includes a significant tax base and EPA providing over \$1 billion in

federal grants and a \$699 million loan through the Water Infrastructure Finance and Innovation Act - San Francisco has not come into compliance with federal clean water standards and must still invest billions of additional dollars to modernize its sewer system.

California has 30 days to provide a written response to EPA outlining in detail how it intends to address the concerns and deficiencies identified in the letter.

To read the full letter, click [here](#).

For more information about EPA's clean water programs, click [here](#).

\*\*\*\*\*

<image001.png>



U S Environmental Protection Agency  
1200 Pennsylvania Avenue Northwest  
Washington, D.C. 20004



[Unsubscribe](#)



Message

---

**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 1:47:41 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Thanks.

Sent from my iPad

> On Sep 25, 2019, at 9:47 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>  
> Correct.  
>  
> And disregard the statement about the Bay side permit being from 2008. I found reference to the 2013 renewal of the 2008 permit.  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Wednesday, September 25, 2019 9:34 AM  
> To: Bodine, Susan <bodine.susan@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>  
> I agree with your redlines and will incorporate some additional clean up on top of them and get this re-signed. To be clear, your last two sentences below are more for my awareness - I didn't see edits associated with them. Right?  
>  
> Sent from my iPad  
>  
>> On Sep 24, 2019, at 11:31 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>>  
>> For your consideration. The groundwater rule is not numeric so I don't think we should say "exceedance"  
>> Deleted the data concerns sentence also - too minor. Not a basis for withdrawing authorization.  
>>  
>> I looked at the permits again and realized the Bay side permit was issued in 2008 (the oceanside was 2009).  
>>  
>> However, according to CA's letter objecting to the updated oceanside permit, their permits have not changed much since 1997.  
>>  
>>  
>> -----Original Message-----  
>> From: Ross, David P <ross.davidp@epa.gov>  
>> Sent: Tuesday, September 24, 2019 11:07 PM  
>> To: Benevento, Douglas <benevento.douglas@epa.gov>  
>> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
>> Subject: Re: Cal Letter and Press Release  
>>  
>> Ok thanks. I will work with Mel in the morning to look for the issues Susan has raised and insert my few additional edits and then Mel will get it to Beth for signature. Thanks all.  
>>  
>> Sent from my iPad  
>>  
>>> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>>  
>>> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>>>  
>>> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>>>  
>>> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>>>  
>>> -----Original Message-----  
>>> From: Ross, David P <ross.davidp@epa.gov>  
>>> Sent: Tuesday, September 24, 2019 10:24 PM  
>>> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
>>> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

>>> Subject: Re: Cal Letter and Press Release

>>>

>>> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

>>>

>>> Sent from my iPad

>>>

>>>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

>>>>

>>>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.

>>>>

>>>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

>>>>

>>>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

>>>>

>>>> The NOV will not go until next week - is the target Thursday?

>>>>

>>>> I need a copy of the signed letter before I talk to press.

>>>>

>>>> -----Original Message-----

>>>> From: Benevento, Douglas <benevento.douglas@epa.gov>

>>>> Sent: Tuesday, September 24, 2019 7:24 PM

>>>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

>>>> Subject: Re: Cal Letter and Press Release

>>>>

>>>> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>>>>>

>>>>> Doug

>>>>>

>>>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

>>>>>

>>>>> Lee

>>>>>

>>>>> Sent from my iPhone

>>>>>

>>>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

>>>>>>

>>>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>>>>

>>>>>> -----Original Message-----

>>>>>> From: Ross, David P <ross.davidp@epa.gov>

>>>>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>>>>> Subject: Cal Letter and Press Release

>>>>>>

>>>>>> Deliberative; Pre-Decisional

>>>>>>

>>>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

>>>>>>

>>>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

>>>>>>

>>>>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

>>>>>>

>>>>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

>>>>>>

>>>>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

>>>>>

>>>>> I'm turning my attention to the TPs now.

>>>>>

>>>>> Sent from my iPad

>>>> <Water TPs spb edits.docx>

>>> <California Water Letter - Final - September, 2019.docx>

>> <California Water Letter - Final - September 2019 spb.docx>

Message

---

**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 1:35:25 PM  
**To:** Ross, David P [ross.davidp@epa.gov]; Mejias, Melissa [mejias.melissa@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

I'm reading. Calling in now.

Sent from my iPad

On Sep 25, 2019, at 9:34 AM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

I've opened up a line – number in calendar. Call when ready.

---

**From:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Sent:** Wednesday, September 25, 2019 9:22 AM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Subject:** Re: Cal Letter and Press Release

Will be available then. Call me.

Sent from my iPhone

On Sep 25, 2019, at 6:20 AM, Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)> wrote:

Ok, I'm going to print and read this, put my edits in pen on top, and then you, Lee and I can get on the phone and talk. Give me 10 minutes or so.

Sent from my iPad

On Sep 25, 2019, at 9:18 AM, Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)> wrote:

The version Susan sent last night attached – this is the latest version! She made edits off of the version Doug circulated last night and I sent you yesterday at 11:02pm. Spoke to Susan and she agrees we have a version control problem.

---

**From:** Mejias, Melissa  
**Sent:** Wednesday, September 25, 2019 8:53 AM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** RE: Cal Letter and Press Release

Please give me a second to confirm all the above.

---

**From:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Sent:** Wednesday, September 25, 2019 8:45 AM  
**To:** Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>

**Subject:** Fwd: Cal Letter and Press Release

So just to be clear. This is the most recent version, which matches the one you sent me in PDF at 11:02 last night. And hopefully this is the one that Susan sent redlines on last night at 11:31 pm, which I forwarded you this morning. Please confirm.

Sent from my iPad

Begin forwarded message:

**From:** "Benevento, Douglas"  
<benevento.douglas@epa.gov>  
**Date:** September 24, 2019 at 10:54:20 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Mejias, Melissa" <mejias.melissa@epa.gov>, "Schiermeyer, Corry" <schiermeyer.corry@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.

Get it to Beth White who can put it on letterhead and get it turned around by noon.

Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>  
Sent: Tuesday, September 24, 2019 10:24 PM  
To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
Subject: Re: Cal Letter and Press Release

Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

Sent from my iPad

On Sep 24, 2019, at 8:25 PM, Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)> wrote:

Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.

On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

The NOV will not go until next week - is the target Thursday?

I need a copy of the signed letter before I talk to press.

-----Original Message-----

From: Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>

Sent: Tuesday, September 24, 2019  
7:24 PM

To: Forsgren, Lee  
<[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Ross, David P  
<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Mejias,  
Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Re: Cal Letter and Press  
Release

Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if

you can get it to him before noon that will work.

Sent from my iPhone

On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)> wrote:

Doug

I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

Lee

Sent from my iPhone

On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)> wrote:

Lee if we change the letter you're

going  
to have  
to  
revise it  
and get  
a new  
signed  
copy to  
Ryan,  
I'm in  
Seattle  
and  
he's  
holding  
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final ve  
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for  
delivery  
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mornin  
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copy is  
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Original  
Messag  
e-----

From:  
Ross,  
David P  
<[ross.d  
avidp@  
epa.gov](mailto:ross.davidp@epa.gov)  
>



Sent:  
Tuesda  
y,  
Septem  
ber 24,  
2019  
2:22  
PM

To:  
Beneve  
nto,  
Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)  
>;

Bodine,  
Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)  
>;

Forsgre  
n, Lee  
<[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)  
>

Cc:  
Mejias,  
Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)  
>

Subject:  
Cal  
Letter  
and  
Press  
Release

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On the  
latest

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t letter?

In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

In the next paragraph, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with

Susan's  
appropriate  
focus  
on  
being  
careful  
about  
oversta-  
ting  
legal  
conclus-  
ions in  
this  
letter.

On the  
press  
release,  
I agree  
with  
Susan's  
edits.  
I'd also  
flag the  
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"disastr-  
ous". I  
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or use a  
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pointed  
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sentenc-  
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comme-  
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policies  
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environ-  
mental  
policies  
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I'm  
turning  
my

attention  
to the  
TPs  
now.

Sent  
from  
my iPad

<Water TPs spb edits.docx>

<California Water Letter - Final - September 2019 spb.pdf>

Message

---

**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 1:19:30 PM  
**To:** Ex. 6  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September 2019 spb.pdf; ATT00001.htm

For home printing.

Sent from my iPad

Begin forwarded message:

**From:** "Mejias, Melissa" <mejias.melissa@epa.gov>  
**Date:** September 25, 2019 at 9:18:32 AM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>  
**Cc:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

The version Susan sent last night attached – this is the latest version! She made edits off of the version Doug circulated last night and I sent you yesterday at 11:02pm. Spoke to Susan and she agrees we have a version control problem.

---

**From:** Mejias, Melissa  
**Sent:** Wednesday, September 25, 2019 8:53 AM  
**To:** Ross, David P <ross.davidp@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

Please give me a second to confirm all the above.

---

**From:** Ross, David P <ross.davidp@epa.gov>  
**Sent:** Wednesday, September 25, 2019 8:45 AM  
**To:** Mejias, Melissa <mejias.melissa@epa.gov>  
**Cc:** Forsgren, Lee <Forsgren.Lee@epa.gov>  
**Subject:** Fwd: Cal Letter and Press Release

So just to be clear. This is the most recent version, which matches the one you sent me in PDF at 11:02 last night. And hopefully this is the one that Susan sent redlines on last night at 11:31 pm, which I forwarded you this morning. Please confirm.

Sent from my iPad

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**Date:** September 24, 2019 at 10:54:20 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>  
**Cc:** "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Mejias, Melissa"

<mejias.melissa@epa.gov>, "Schiermeyer, Corry" <schiermeyer.corry@epa.gov>

**Subject: RE: Cal Letter and Press Release**

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From: Ross, David P <ross.davidp@epa.gov>

Sent: Tuesday, September 24, 2019 10:24 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>

Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee

<Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

Subject: Re: Cal Letter and Press Release

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Sent from my iPad

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From: Benevento, Douglas <benevento.douglas@epa.gov>

Sent: Tuesday, September 24, 2019 7:24 PM

To: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

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From: Ross, David P  
<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Sent: Tuesday, September 24, 2019  
2:22 PM



To: Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>;  
Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren,  
Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Cc: Mejias, Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
Subject: Cal Letter and Press Release

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Sent from my iPad

<Water TPs spb edits.docx>

Message

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**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 1:09:33 PM  
**To:** Ex. 6  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September, 2019.docx; ATT00001.htm; California Water Letter - Final - September 2019.pdf; ATT00002.htm

For home printing.

Sent from my iPad

Begin forwarded message:

**From:** "Mejias, Melissa" <mejias.melissa@epa.gov>  
**Date:** September 24, 2019 at 11:02:02 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>  
**Subject:** FW: Cal Letter and Press Release

Latest version. I'll call Corry in the morning to let her know we have edits.

-----Original Message-----

From: Benevento, Douglas <benevento.douglas@epa.gov>  
Sent: Tuesday, September 24, 2019 10:54 PM  
To: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
Cc: Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
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Get it to Beth White who can put it on letterhead and get it turned around by noon.

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Sent: Tuesday, September 24, 2019 2:22 PM

To: Benevento, Douglas

<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>; Bodine, Susan

<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren, Lee

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Subject: Cal Letter and Press Release

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<Water TPs spb edits.docx>

Message

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**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 12:44:43 PM  
**To:** Mejias, Melissa [mejias.melissa@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September, 2019.docx; ATT00001.htm

So just to be clear. This is the most recent version, which matches the one you sent me in PDF at 11:02 last night. And hopefully this is the one that Susan sent redlines on last night at 11:31 pm, which I forwarded you this morning. Please confirm.

Sent from my iPad

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**From:** "Benevento, Douglas" <benevento.douglas@epa.gov>  
**Date:** September 24, 2019 at 10:54:20 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>  
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<Water TPs spb edits.docx>

Message

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**To:** Mejias, Melissa [mejias.melissa@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
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To: Benevento, Douglas

<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>; Bodine, Susan

<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren, Lee

<[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Cal Letter and Press Release

Deliberative; Pre-Decisional

On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is

commenting on homelessness policies, not  
environmental policies.

I'm turning my attention to the TPs now.

Sent from my iPad

<Water TPs spb edits.docx>

Message

---

**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 12:42:06 PM  
**To:** Bodine, Susan [bodine.susan@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Scratch that. Missed your attachment.

Sent from my iPad

> On Sep 25, 2019, at 8:12 AM, Ross, David P <ross.davidp@epa.gov> wrote:  
>  
> As I open this up this morning, are you saying you already made these changes in your last redline?  
>  
> Sent from my iPhone  
>  
>> On Sep 24, 2019, at 11:31 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>>  
>> For your consideration. The groundwater rule is not numeric so I don't think we should say "exceedance"  
>> Deleted the data concerns sentence also - too minor. Not a basis for withdrawing authorization.  
>>  
>> I looked at the permits again and realized the Bay side permit was issued in 2008 (the oceanside was 2009).  
>>  
>> However, according to CA's letter objecting to the updated oceanside permit, their permits have not changed much since 1997.  
>>  
>>  
>> -----Original Message-----  
>> From: Ross, David P <ross.davidp@epa.gov>  
>> Sent: Tuesday, September 24, 2019 11:07 PM  
>> To: Benevento, Douglas <benevento.douglas@epa.gov>  
>> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
>> Subject: Re: Cal Letter and Press Release  
>>  
>> Ok thanks. I will work with Mel in the morning to look for the issues Susan has raised and insert my few additional edits and then Mel will get it to Beth for signature. Thanks all.  
>>  
>> Sent from my iPad  
>>  
>>> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>>  
>>> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>>>  
>>> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>>>  
>>> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>>>  
>>> -----Original Message-----  
>>> From: Ross, David P <ross.davidp@epa.gov>  
>>> Sent: Tuesday, September 24, 2019 10:24 PM  
>>> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
>>> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
>>> Subject: Re: Cal Letter and Press Release  
>>>  
>>> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
>>>  
>>> Sent from my iPad  
>>>  
>>>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>>>>  
>>>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>>>>

>>>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

>>>>

>>>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

>>>>

>>>> The NOV will not go until next week - is the target Thursday?

>>>>

>>>> I need a copy of the signed letter before I talk to press.

>>>>

>>>> -----Original Message-----

>>>> From: Benevento, Douglas <benevento.douglas@epa.gov>

>>>> Sent: Tuesday, September 24, 2019 7:24 PM

>>>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

>>>> Subject: Re: Cal Letter and Press Release

>>>>

>>>> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>>>>>

>>>>> Doug

>>>>>

>>>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

>>>>>

>>>>> Lee

>>>>>

>>>>> Sent from my iPhone

>>>>>

>>>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

>>>>>>

>>>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>>>>

>>>>>> -----Original Message-----

>>>>>> From: Ross, David P <ross.davidp@epa.gov>

>>>>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>>>>> Subject: Cal Letter and Press Release

>>>>>>

>>>>>> Deliberative; Pre-Decisional

>>>>>>

>>>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

>>>>>>

>>>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

>>>>>>

>>>>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

>>>>>>

>>>>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

>>>>>>

>>>>>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

>>>>>>

>>>>>> I'm turning my attention to the TPs now.

>>>>>>

>>>>>> Sent from my iPad

>>>> <Water TPs spb edits.docx>

>>> <California Water Letter - Final - September, 2019.docx>

>> <California Water Letter - Final - September 2019 spb.docx>

Message

---

**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 12:40:35 PM  
**To:** Mejias, Melissa [mejias.melissa@epa.gov]  
**CC:** Forsgren, Lee [Forsgren.Lee@epa.gov]  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September 2019 spb.docx; ATT00001.htm

Can you send me this attachment in PDF?

Sent from my iPad

Begin forwarded message:

**From:** "Bodine, Susan" <bodine.susan@epa.gov>  
**Date:** September 24, 2019 at 11:31:58 PM EDT  
**To:** "Ross, David P" <ross.davidp@epa.gov>  
**Subject:** RE: Cal Letter and Press Release

For your consideration. The groundwater rule is not numeric so I don't think we should say "exceedance"

Deleted the data concerns sentence also - too minor. Not a basis for withdrawing authorization.

I looked at the permits again and realized the Bay side permit was issued in 2008 (the oceanside was 2009).

However, according to CA's letter objecting to the updated oceanside permit, their permits have not changed much since 1997.

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>  
Sent: Tuesday, September 24, 2019 11:07 PM  
To: Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Subject: Re: Cal Letter and Press Release

Ok thanks. I will work with Mel in the morning to look for the issues Susan has raised and insert my few additional edits and then Mel will get it to Beth for signature. Thanks all.

Sent from my iPad

On Sep 24, 2019, at 10:54 PM, Benevento, Douglas  
<benevento.douglas@epa.gov> wrote:

Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.

Get it to Beth White who can put it on letterhead and get it turned around by noon.

Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.

-----Original Message-----

From: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Sent: Tuesday, September 24, 2019 10:24 PM

To: Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>

Cc: Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Re: Cal Letter and Press Release

Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

Sent from my iPad

On Sep 24, 2019, at 8:25 PM, Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)> wrote:

Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.

On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

The NOV will not go until next week - is the target Thursday?

I need a copy of the signed letter before I talk to press.

-----Original Message-----

From: Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>  
Sent: Tuesday, September 24, 2019 7:24 PM  
To: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Cc: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
Subject: Re: Cal Letter and Press Release

Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

Sent from my iPhone

On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)> wrote:

Doug

I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

Lee

Sent from my iPhone

On Sep 24, 2019, at 5:46 PM,  
Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>  
wrote:

Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

-----Original Message-----

From: Ross, David P  
<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Sent: Tuesday, September 24, 2019  
2:22 PM

To: Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>;  
Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren,  
Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Mejias, Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Cal Letter and Press Release

Deliberative; Pre-Decisional

On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

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In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

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less pointed adjective as the sentence  
is commenting on homelessness  
policies, not environmental policies.

I'm turning my attention to the TPs  
now.

Sent from my iPad

<Water TPs spb edits.docx>

<California Water Letter - Final - September, 2019.docx>

Message

---

**From:** ross.davidp@epa.gov [ross.davidp@epa.gov]  
**Sent:** 9/25/2019 2:18:41 PM  
**To:** Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Hi Corry. Can you call my cell this morning when you have a chance. I have one question for you.

Ex. 6 Personal Privacy (PP)

Sent from my iPhone

> On Sep 25, 2019, at 10:09 AM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:  
>  
> Thank you.  
>  
> Mel...please let me know when you get it to Beth...I will follow up with her to ensure we get a final, signed and dated copy.  
>  
> Thank you!  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Wednesday, September 25, 2019 10:04 AM  
> To: Benevento, Douglas <benevento.douglas@epa.gov>  
> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>  
> FYI. I have worked with Susan to give this a comprehensive review and clean up edit. Mel, Lee and I just reviewed those edits, and Mel will be putting this into a final version to pass on to the AO shortly.  
>  
> Thanks all.  
>  
> Sent from my iPad  
>  
>> On Sep 24, 2019, at 10:54 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>  
>> Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.  
>>  
>> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>>  
>> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>>  
>> -----Original Message-----  
>> From: Ross, David P <ross.davidp@epa.gov>  
>> Sent: Tuesday, September 24, 2019 10:24 PM  
>> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
>> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
>> Subject: Re: Cal Letter and Press Release  
>>  
>> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
>>  
>> Sent from my iPad  
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>>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
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>>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.  
>>>  
>>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.  
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>>> The NOV will not go until next week - is the target Thursday?  
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>>> I need a copy of the signed letter before I talk to press.  
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>>> -----Original Message-----  
>>> From: Benevento, Douglas <benevento.douglas@epa.gov>  
>>> Sent: Tuesday, September 24, 2019 7:24 PM  
>>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>  
>>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
>>> Subject: Re: Cal Letter and Press Release  
>>>  
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>>>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:  
>>>>  
>>>> Doug  
>>>>  
>>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.  
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>>>> Lee  
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>>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:  
>>>>>  
>>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.  
>>>>>  
>>>>> -----Original Message-----  
>>>>> From: Ross, David P <ross.davidp@epa.gov>  
>>>>> Sent: Tuesday, September 24, 2019 2:22 PM  
>>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>  
>>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>  
>>>>> Subject: Cal Letter and Press Release  
>>>>>  
>>>>> Deliberative; Pre-Decisional  
>>>>>  
>>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:  
>>>>>  
>>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?  
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>>>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.  
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>>>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.  
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>>>>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.  
>>>>>  
>>>>> I'm turning my attention to the TPs now.  
>>>>>  
>>>>> Sent from my iPad  
>>> <Water TPs spb edits.docx>  
>> <California Water Letter - Final - September, 2019.docx>

Message

---

**From:** Ross, David P [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=119CD8B52DD14305A84863124AD6D8A6-ROSS, DAVID]  
**Sent:** 9/25/2019 1:19:34 PM  
**To:** Ex. 6 Personal Privacy (PP)  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September 2019 spb.pdf; ATT00001.htm

For home printing.

Sent from my iPad

Begin forwarded message:

**From:** "Mejias, Melissa" <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Date:** September 25, 2019 at 9:18:32 AM EDT  
**To:** "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** RE: Cal Letter and Press Release

The version Susan sent last night attached – this is the latest version! She made edits off of the version Doug circulated last night and I sent you yesterday at 11:02pm. Spoke to Susan and she agrees we have a version control problem.

---

**From:** Mejias, Melissa  
**Sent:** Wednesday, September 25, 2019 8:53 AM  
**To:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** RE: Cal Letter and Press Release

Please give me a second to confirm all the above.

---

**From:** Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>  
**Sent:** Wednesday, September 25, 2019 8:45 AM  
**To:** Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Cc:** Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** Fwd: Cal Letter and Press Release

So just to be clear. This is the most recent version, which matches the one you sent me in PDF at 11:02 last night. And hopefully this is the one that Susan sent redlines on last night at 11:31 pm, which I forwarded you this morning. Please confirm.

Sent from my iPad

Begin forwarded message:

**From:** "Benevento, Douglas" <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>  
**Date:** September 24, 2019 at 10:54:20 PM EDT  
**To:** "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>, "Bodine, Susan" <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>, "Jackson, Ryan" <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>  
**Cc:** "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>, "Mejias, Melissa"

<mejias.melissa@epa.gov>, "Schiermeyer, Corry" <schiermeyer.corry@epa.gov>

**Subject: RE: Cal Letter and Press Release**

Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.

Get it to Beth White who can put it on letterhead and get it turned around by noon.

Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.

-----Original Message-----

From: Ross, David P <ross.davidp@epa.gov>

Sent: Tuesday, September 24, 2019 10:24 PM

To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>

Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee

<Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

Subject: Re: Cal Letter and Press Release

Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?

Sent from my iPad

On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

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On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.

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The NOV will not go until next week - is the target Thursday?

I need a copy of the signed letter before I talk to press.

-----Original Message-----

From: Benevento, Douglas <benevento.douglas@epa.gov>

Sent: Tuesday, September 24, 2019 7:24 PM

To: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>

Cc: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>

Subject: Re: Cal Letter and Press Release

Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

Sent from my iPhone

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<[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)> wrote:

Doug

I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

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Sent from my iPhone

On Sep 24, 2019, at 5:46 PM,  
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<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)> wrote:

Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

-----Original Message-----

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<[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>

Sent: Tuesday, September 24, 2019  
2:22 PM

To: Benevento, Douglas  
<[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>;  
Bodine, Susan  
<[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Forsgren,  
Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
Cc: Mejias, Melissa  
<[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
Subject: Cal Letter and Press Release

Deliberative; Pre-Decisional

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I'm turning my attention to the TPs now.

Sent from my iPad

<Water TPs spb edits.docx>



Message

---

**From:** Ross, David P [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=119CD8B52DD14305A84863124AD6D8A6-ROSS, DAVID]  
**Sent:** 9/25/2019 1:09:35 PM  
**To:** Ex. 6 Personal Privacy (PP)  
**Subject:** Fwd: Cal Letter and Press Release  
**Attachments:** California Water Letter - Final - September, 2019.docx; ATT00001.htm; California Water Letter - Final - September 2019.pdf; ATT00002.htm

For home printing.

Sent from my iPad

Begin forwarded message:

**From:** "Mejias, Melissa" <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>  
**Date:** September 24, 2019 at 11:02:02 PM EDT  
**To:** "Ross, David P" <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>, "Forsgren, Lee" <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>  
**Subject:** FW: Cal Letter and Press Release

Latest version. I'll call Corry in the morning to let her know we have edits.

-----Original Message-----

From: Benevento, Douglas <[benevento.douglas@epa.gov](mailto:benevento.douglas@epa.gov)>  
Sent: Tuesday, September 24, 2019 10:54 PM  
To: Ross, David P <[ross.davidp@epa.gov](mailto:ross.davidp@epa.gov)>; Bodine, Susan <[bodine.susan@epa.gov](mailto:bodine.susan@epa.gov)>; Jackson, Ryan <[jackson.ryan@epa.gov](mailto:jackson.ryan@epa.gov)>  
Cc: Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Mejias, Melissa <[mejias.melissa@epa.gov](mailto:mejias.melissa@epa.gov)>; Schiermeyer, Corry <[schiermeyer.corry@epa.gov](mailto:schiermeyer.corry@epa.gov)>  
Subject: RE: Cal Letter and Press Release

Dave, this is the letter you were cc'd on, it should look familiar. If you're going to make changes this is the one you should work off of.

Get it to Beth White who can put it on letterhead and get it turned around by noon.

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Sent: Tuesday, September 24, 2019 10:24 PM  
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Subject: Cal Letter and Press Release

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<Water TPs spb edits.docx>

Message

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**Sent:** 9/25/2019 2:18:42 PM  
**To:** Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**Subject:** Re: Cal Letter and Press Release

Hi Corry. Can you call my cell this morning when you have a chance. I have one question for you.

Ex. 6 Personal Privacy (PP)

Sent from my iPhone

> On Sep 25, 2019, at 10:09 AM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:  
>  
> Thank you.  
>  
> Mel...please let me know when you get it to Beth...I will follow up with her to ensure we get a final, signed and dated copy.  
>  
> Thank you!  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Wednesday, September 25, 2019 10:04 AM  
> To: Benevento, Douglas <benevento.douglas@epa.gov>  
> Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>  
> FYI. I have worked with Susan to give this a comprehensive review and clean up edit. Mel, Lee and I just reviewed those edits, and Mel will be putting this into a final version to pass on to the AO shortly.  
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> Thanks all.  
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>>>>> Deliberative; Pre-Decisional  
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>>>>> Sent from my iPad  
>>>>> <Water TPs spb edits.docx>  
>>>>> <California Water Letter - Final - September, 2019.docx>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

September 26, 2019

THE ADMINISTRATOR

The Honorable Gavin C. Newsom  
1303 10th Street, Suite 1173  
Sacramento, California 95814

Dear Governor Newsom:

The U.S. Environmental Protection Agency and California Environmental Protection Agency are responsible for working together to protect public health and the environment in your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal *Clean Water Act* and *Safe Drinking Water Act* among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with the EPA overseeing state actions.

Based on data and reports, the EPA is concerned that California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the state must take to address them. To ensure that appropriate steps are being taken to protect Californians, the EPA would like a remedial plan from the state detailing the steps it is taking to address the issues raised below.

The EPA is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> The EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

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<sup>1</sup> The EPA first authorized California's base *Clean Water Act* program in 1973. The EPA subsequently approved the state to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989 and issue general permits in 1989. California also has received primacy to exercise *Safe Drinking Water Act* responsibilities in the state.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces," *NPR* (Aug. 1, 2018) available at <https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces> (last accessed Sept. 4, 2019).

<sup>3</sup> Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for

Francisco, Los Angeles and the state do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The state is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. The EPA is committed to helping the state address this problem. In fact, the EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the city into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice – allowed by CalEPA – of routinely discharging more than one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only and do not always achieve even that low level of treatment. These discharges may be contributing to the state's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the city allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the state has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the state's years-long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The city's practices endanger public health, and the EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the city into compliance.

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Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at* [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html) (last accessed September 22, 2019).

<sup>4</sup> The EPA's current data also indicates that 15 major Publicly Owned Treatment Works are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. *See* U.S. EPA, Enforcement and Compliance History Online water facility public search tool (<https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa>).



The state's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted the EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued National Pollutant Discharge Elimination System permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, the EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations and enforcement actions submitted to the EPA by California.

California has the resources to address these problems. Apart from the state's significant tax base, California received more than \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received more than \$152 million in categorical grants over this time to improve compliance with the CWA.

The EPA also has concerns about CalEPA's administration and oversight of *Safe Drinking Water Act* programs and public water systems within the state. Indeed, we are aware of numerous recent health-based exceedances: in just the most recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting more than 101,000 residents;
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting more than 10,000 residents;
- two systems with serious Ground Water Rule<sup>5</sup> exceedances,<sup>6</sup> impacting more than 250,000 residents;
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents; and
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

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<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

These exceedances call into question the state's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

Under this Administration, the EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the state to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the state has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Sincerely,



Andrew R. Wheeler

Message

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**From:** Mejias, Melissa [mejias.melissa@epa.gov]  
**Sent:** 9/25/2019 2:35:14 PM  
**To:** Schiermeyer, Corry [schiermeyer.corry@epa.gov]  
**Subject:** RE: Cal Letter and Press Release

Beth should have it in her inbox now.

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Sent: Wednesday, September 25, 2019 10:09 AM  
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To: Benevento, Douglas <benevento.douglas@epa.gov>  
Cc: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
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> Get it to Beth White who can put it on letterhead and get it turned around by noon.  
>  
> Corry, if I understood you correctly the Washington Post is now the outlet we're working with and they will receive the letter at noon tomorrow and embargo it until Thursday morning.  
>  
> -----Original Message-----  
> From: Ross, David P <ross.davidp@epa.gov>  
> Sent: Tuesday, September 24, 2019 10:24 PM  
> To: Bodine, Susan <bodine.susan@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>  
> Cc: Benevento, Douglas <benevento.douglas@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
> Subject: Re: Cal Letter and Press Release  
>  
> Could somebody please get me what they think is the final version of the letter first thing in the morning and I will fix it. Who has the final electronic version?  
>  
> Sent from my iPad  
>  
>> On Sep 24, 2019, at 8:25 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:  
>>  
>> Attached are my edits to the TPs. It does not matter if I am the only person speaking to press but I want the information distributed internally to be consistent and accurate.  
>>  
>> On the letter, the last version I saw had the word "violation" in it 5 times - in the drinking water section.  
>>

>> Your note says this is going out at noon tomorrow. That is just to the SF Chronicle and is embargoed, right? I thought it was going out more broadly on Thursday. I am speaking to the Chronicle at 1:30 tomorrow.

>>

>> The NOV will not go until next week - is the target Thursday?

>>

>> I need a copy of the signed letter before I talk to press.

>>

>> -----Original Message-----

>> From: Benevento, Douglas <benevento.douglas@epa.gov>

>> Sent: Tuesday, September 24, 2019 7:24 PM

>> To: Forsgren, Lee <Forsgren.Lee@epa.gov>

>> Cc: Ross, David P <ross.davidp@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>

>> Subject: Re: Cal Letter and Press Release

>>

>> Ryan has a final going out at noon tomorrow. I've told him we may substitute out the one in he has. Dave if you can get it to him before noon that will work.

>>

>> Sent from my iPhone

>>

>>> On Sep 24, 2019, at 4:17 PM, Forsgren, Lee <Forsgren.Lee@epa.gov> wrote:

>>>

>>> Doug

>>>

>>> I am in Chicago enroute to Seattle. So I have no ability to change the letter and get it to a Ryan. Melissa has the ability to make those changes but will leave whether we can do it to Dave.

>>>

>>> Lee

>>>

>>> Sent from my iPhone

>>>

>>>> On Sep 24, 2019, at 5:46 PM, Benevento, Douglas <benevento.douglas@epa.gov> wrote:

>>>>

>>>> Lee if we change the letter you're going to have to revise it and get a new signed copy to Ryan, I'm in Seattle and he's holding the final version for delivery. The letter should go to Beth White. The letter is going out very early Thursday morning. Make sure the old copy is destroyed.

>>>>

>>>> -----Original Message-----

>>>> From: Ross, David P <ross.davidp@epa.gov>

>>>> Sent: Tuesday, September 24, 2019 2:22 PM

>>>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>

>>>> Cc: Mejias, Melissa <mejias.melissa@epa.gov>

>>>> Subject: Cal Letter and Press Release

>>>>

>>>> Deliberative; Pre-Decisional

>>>>

>>>> On the latest version of the Cal water letter, I agree with Susan's redlines. A few other nits:

>>>>

>>>> In opening para, no need for comma after "Clean Water Act (CWA)", but add a comma after Californians near the end of the para. Also, do we still want a reference to air in this paragraph if the air was subject to a different letter?

>>>>

>>>> In the paragraph that starts with "Overall" on the second page, I'd delete the clause "with little to no oversight" unless we have factual support for that statement. It isn't needed in any event.

>>>>

>>>> In the next para, after the Marin County sentence, change "violations" to "issues" in the next sentence to make it align with Susan's appropriate focus on being careful about overstating legal conclusions in this letter.

>>>>

>>>> On the press release, I agree with Susan's edits. I'd also flag the word "disastrous". I would delete or use a less pointed adjective as the sentence is commenting on homelessness policies, not environmental policies.

>>>>

>>>> I'm turning my attention to the TPs now.

>>>>

>>>> Sent from my iPad

>> <Water TPs spb edits.docx>

> <California Water Letter - Final - September, 2019.docx>

Message

---

**From:** Hope, Brian [Hope.Brian@epa.gov]  
**Sent:** 9/25/2019 4:03:33 PM  
**To:** White, Elizabeth [white.elizabeth@epa.gov]; Moritz, Brigitte [Moritz.Brigette@epa.gov]  
**Subject:** RE: Water  
**Attachments:** California Water Letter - Final - September 2019.OEX Edits.9.23.19.docx

Can we please forward this to Corry and ask for edits to it? I'd rather work from our latest draft - especially since there are apparently not significant edits. Neither Brigitte nor I have time to waste re-doing work we did a couple of days ago. That letter took a long time to fix - it was a flipping mess.

-----Original Message-----

From: White, Elizabeth <white.elizabeth@epa.gov>  
Sent: Wednesday, September 25, 2019 11:31 AM  
To: Moritz, Brigitte <Moritz.Brigette@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>  
Subject: FW: Water

The letter changed, of course. I don't know what part of the letter changed though.

Beth White  
Director, Office of the Executive Secretariat U.S. Environmental Protection Agency  
(202) 564-1781 direct  
Ex. 6 Personal Privacy (PP) cell

-----Original Message-----

From: Mejias, Melissa <mejias.melissa@epa.gov>  
Sent: Wednesday, September 25, 2019 10:53 AM  
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>  
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>  
Subject: RE: Water

Of course, please find the letter attached. The date needs to be amended.

-----Original Message-----

From: Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Sent: Wednesday, September 25, 2019 10:49 AM  
To: Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Mejias, Melissa <mejias.melissa@epa.gov>  
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>  
Subject: RE: Water

MeL...could you send us all what you sent Beth?

-----Original Message-----

From: Block, Molly <block.molly@epa.gov>  
Sent: Wednesday, September 25, 2019 10:48 AM  
To: Beach, Christopher <beach.christopher@epa.gov>; Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>  
Subject: RE: Water

Can you forward my way so I can get cracking on a script for susan?

-----Original Message-----

From: Beach, Christopher  
Sent: Wednesday, September 25, 2019 10:06 AM  
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; Block, Molly <block.molly@epa.gov>  
Subject: Re: Water

I sent it home with AW last night. Trying to figure out if he looked at it yet.

Sent from my iPhone

> On Sep 25, 2019, at 8:59 AM, Schiermeyer, Corry <schiermeyer.corry@epa.gov> wrote:  
>  
> Do we have an updated water release with quote?  
>  
> Molly needs it. I will get her the final letter.  
>  
> Sent from my iPhone  
>

>> On Sep 24, 2019, at 10:29 AM, McFaul, Jessica <mcfaul.jessica@epa.gov> wrote:  
>>  
>> This is the most recent version of the release that I edited and sent  
>> back to Doug, based on AAW's comments below. Doug could say whether  
>> AAW has seen this version. Jess  
>>  
>> -----Original Message-----  
>> From: McFaul, Jessica  
>> Sent: Monday, September 23, 2019 1:31 PM  
>> To: Benevento, Douglas <benevento.douglas@epa.gov>  
>> Cc: Schiermeyer, Corry <schiermeyer.corry@epa.gov>  
>> Subject: RE: Water  
>>  
>> Edits incorporated (plus one more from me for consideration). Looping  
>> Corry for her awareness. Jess  
>>  
>> -----Original Message-----  
>> From: Benevento, Douglas <benevento.douglas@epa.gov>  
>> Sent: Monday, September 23, 2019 12:10 PM  
>> To: McFaul, Jessica <mcfaul.jessica@epa.gov>  
>> Subject: FW: Water  
>>  
>>  
>> -----Original Message-----  
>> From: adm15.arwheeler.email <adm15.arwheeler.email@epa.gov>  
>> Sent: Monday, September 23, 2019 11:36 AM  
>> To: Benevento, Douglas <benevento.douglas@epa.gov>; Jackson, Ryan  
>> <jackson.ryan@epa.gov>  
>> Subject: Water  
>>  
>> On press release, my quote after obligation add a parenthetical  
>> (receiving its delegated authority in 19XX)  
>>  
>> Last sentence of quite has a typo, rewrite it to say  
>>  
>> "If California does not step up to its delegated responsibilities then EPA will be forced to take  
actions."  
>>  
>> Sent from my iPhone  
>> <09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS.docx>

September 17, 2019

The Honorable Gavin C. Newsom  
1303 10th Street, Suite 1173  
Sacramento, California 95814

Dear Governor Newsom:

The U.S. Environmental Protection Agency and California Environmental Protection Agency are responsible for working together to protect public health and the environment in your state. As a result of the authorization of state laws and the delegation of federal authority, California administers and implements the federal *Clean Water Act* and *Safe Drinking Water Act* among other federal programs.<sup>1</sup> Congress designed these statutory frameworks for the states to take the lead role in implementation, with the EPA overseeing state actions.

Based on data and reports, the EPA is concerned that California's implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs. The cost of this failure will be paid by those Californians exposed to unhealthy air and degraded water. The purpose of this letter is to outline the deficiencies that have led to significant public health concerns in California and to outline steps the state must take to address them. To ensure that appropriate steps are being taken to protect Californians, the EPA would like a remedial plan from the state detailing the steps it is taking to address the issues raised below.

The EPA is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment. Indeed, press reports indicate that "piles of human feces" on sidewalks and streets in these cities are becoming all too common.<sup>2</sup> The EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters.<sup>3</sup> San

---

<sup>1</sup> The EPA first authorized California's base *Clean Water Act* program in 1973. The EPA subsequently approved the state to regulate discharges from federal facilities in 1978, administer the pretreatment program in 1989 and issue general permits in 1989. California also has received primacy to exercise *Safe Drinking Water Act* responsibilities in the state.

<sup>2</sup> See, e.g., Raphelson, Samantha. "San Francisco Squalor: City Streets Strewn With Trash, Needles And Human Feces, *NPR* (Aug. 1, 2018) available at <https://www.npr.org/2018/08/01/634626538/san-francisco-squalor-city-streets-strewn-with-trash-needles-and-human-feces> (last accessed Sept. 4, 2019).

<sup>3</sup> Human waste from homeless populations is a recognized source of bacteria in water bodies. See American Society of Civil Engineers, "Pathogens in Urban Stormwater Systems" (Aug. 2014); "The California Microbial Source Identification Manual: A Tiered Approach to Identifying Fecal Pollution Sources to Beaches" (Dec. 2013); Tools for

Francisco, Los Angeles and the state do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis. California is responsible for implementing appropriate municipal storm water management and waste treatment requirements as part of its assumed federal program. The state is failing to properly implement these programs.

San Francisco is also one of the few major cities with sewers that combine stormwater and sewage flows that is not under a federal consent decree to meet the requirements of federal law. The EPA is committed to helping the state address this problem. In fact, the EPA provided the San Francisco Public Utility Commission a loan of \$699 million under favorable terms pursuant to authority under the Water Infrastructure Finance and Innovation Act in July 2018 for biosolid digestors and other related projects. However, these projects will not bring the city into compliance. San Francisco must invest billions of dollars to modernize its sewer system to meet CWA standards, avoid dumping untreated and partially treated sewage into the San Francisco Bay and Pacific Ocean where it can wash up on beaches and keep raw sewage inside pipes instead of in homes and businesses.

Even more troubling is the City of San Francisco's years-long practice – allowed by CalEPA – of routinely discharging more than one billion gallons of combined sewage and stormwater into San Francisco Bay and the Pacific Ocean on an annual basis. The CWA requires municipal sewage be treated to certain levels and to meet water quality standards. Nonetheless, although San Francisco's combined sewer outfalls discharge to sensitive waters, like beaches, these discharges do not receive biological treatment. Instead, San Francisco's combined sewer overflows are designed to remove floatables and settleable solids only and do not always achieve even that low level of treatment. These discharges may be contributing to the state's failure to meet water quality standards. By failing to maintain its sewer infrastructure, the city allowed raw sewage to back up into homes and businesses.

Overall, significant deficiencies are present, and the state has not acted with a sense of urgency to abate this public health and environmental problem. Among the other issues identified, the state's years-long approval of the discharges referenced above under its authorized CWA program, with little or no oversight, raises serious questions as to whether it is administering a program consistent with federal law.<sup>4</sup> The city's practices endanger public health, and the EPA is prepared to take the necessary steps to ensure CWA compliance. Given the magnitude of the issues, I have asked EPA staff to consider all options available to bring the city into compliance.

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Tracking Human Fecal Pollution in Urban Storm Drains, Streams, and Beaches (Sept. 2012). These reports are available on the website for the San Francisco Bay Beaches Bacteria TMDL *available at* [https://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/TMDLs/SFbaybeachesbacteria.html](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/SFbaybeachesbacteria.html) (last accessed September 22, 2019).

<sup>4</sup> The EPA's current data also indicates that 15 major Publicly Owned Treatment Works are in significant noncompliance and 11 non-major POTWs are currently in significant noncompliance. These data are publicly available. See U.S. EPA, Enforcement and Compliance History Online water facility public search tool (<https://echo.epa.gov/facilities/facility-search?mediaSelected=cwa>).



The state's lack of action in response to the homelessness crisis and San Francisco's discharges of inadequately treated sewage prompted the EPA to review other programs administered by CalEPA for similar concerns. What we discovered after a preliminary review suggests the need for more formal and in-depth EPA oversight. For example, we are aware of numerous exceedances of state-issued National Pollutant Discharge Elimination System permits under section 402 of the CWA. Just in this past quarter, we identified 23 significant instances of discharges into waters of the United States in exceedance of permit limits. By way of example, the City of Los Angeles exceeded its permit limit for Indeno[1,2,3-cd]pyrene (a contaminant which is reasonably anticipated to be a human carcinogen) by 442 percent; the University of Southern California exceeded its permit limit for copper (a metal which can adversely affect human health and the health of aquatic life) by 420 percent; and Sanitary District Number 5 of Marin County exceeded its permit limit for total cyanide by 5,194 percent. These are serious violations that warrant a strong review by California. Moreover, the EPA is concerned about potentially inaccurate or incomplete NPDES program data on facility inspections, violations and enforcement actions submitted to the EPA by California.

California has the resources to address these problems. Apart from the state's significant tax base, California received more than \$1.16 billion of federal funds to implement CWA programs just in the last five years, including \$253.5 million in FY2018 and \$247 million in FY2019. In addition, California received more than \$152 million in categorical grants over this time to improve compliance with the CWA.

The EPA also has concerns about CalEPA's administration and oversight of *Safe Drinking Water Act* programs and public water systems within the state. Indeed, we are aware of numerous recent health-based exceedances: in just the most recent reporting quarter of 2019, California had 202 Community Water Systems with 665 health-based exceedances that put the drinking water of nearly 800,000 residents at risk. These exceedances include:

- 67 systems with 194 serious health-based exceedances of arsenic levels, impacting more than 101,000 residents;
- 210 lead action level exceedances in just the most recent 3-year interval at 168 PWSs, impacting more than 10,000 residents;
- two systems with serious Ground Water Rule<sup>5</sup> exceedances,<sup>6</sup> impacting more than 250,000 residents;
- 44 systems with 154 exceedances of the Stage 1 and 2 disinfection byproduct regulations, impacting almost 255,000 residents; and
- 25 systems with 69 violations of radiological standards, impacting almost 12,000 residents.

---

<sup>5</sup> The 2006 Ground Water Rule is a National Primary Drinking Water Regulation under the SDWA aimed at providing increased protection against microbial pathogens in public water systems that use ground water sources. *See* 71 FR 65574.

<sup>6</sup> These health-based violations are associated with unaddressed "significant deficiencies" identified via an audit of the system, called a "sanitary survey," and include, for example, an opening through which bacteria could enter a well head that the system has not repaired.

These exceedances call into question the state's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.

Under this Administration, the EPA stands ready to assist California and CalEPA to protect the health and environment of Californians. However, it is time for the state to act decisively under its authorities to address the problems identified in this letter. For each of the delegated or assumed programs discussed in this letter, I request a written response within 30 days outlining in detail how California intends to address the concerns and violations identified herein. This response should include a demonstration that the state has the adequate authority and capability to address these issues and specific anticipated milestones for correcting these problems. I look forward to hearing from you.

Sincerely,

Andrew R. Wheeler

Message

---

**From:** White, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F8AF641A6306479C9026142EF3B02BD7-WHITE, ELIZ]  
**Sent:** 9/25/2019 3:30:47 PM  
**To:** Moritz, Brigitte [Moritz.Brigette@epa.gov]; Hope, Brian [Hope.Brian@epa.gov]  
**Subject:** FW: Water  
**Attachments:** California Water Letter - Final - September 2019 spb dpr.docx; California Water Letter - Final - September 2019 spb dpr.pdf

The letter changed, of course. I don't know what part of the letter changed though.

Beth White  
Director, Office of the Executive Secretariat  
U.S. Environmental Protection Agency  
(202) 564-1781 direct  
[Ex. 6 Personal Privacy (PP)]cell

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From: Mejias, Melissa <mejias.melissa@epa.gov>  
Sent: Wednesday, September 25, 2019 10:53 AM  
To: Schiermeyer, Corry <schiermeyer.corry@epa.gov>; Block, Molly <block.molly@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>  
Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>  
Subject: RE: Water

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Mel...could you send us all what you sent Beth?

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Cc: McFaul, Jessica <mcfaul.jessica@epa.gov>; Block, Molly <block.molly@epa.gov>  
Subject: Re: Water

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Sent from my iPhone

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>> To: Benevento, Douglas <benevento.douglas@epa.gov>  
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>> "If California does not step up to its delegated responsibilities then EPA will be forced to take  
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>> Sent from my iPhone  
>> <09-23-2019 - DRAFT RELEASE - Water letter to CA AAW EDITS.docx>

## **EPA Hot Topics**

**Updated: October 4, 2019**

### **Impeachment:**

- I believe the President will be fully exonerated, as he has been with all other House Democrat investigations.
- I'm focused on the mission of the Agency of protecting human health and the environment. House Democrats should focus on what's best for the nation and not another meritless investigation.

### **Climate Change**

- At EPA, we are addressing Climate Change, and as a Nation, we continue to grow our economy, while also protecting our environment.
- Here in the U.S., our fossil fuels are extracted and produced in a more environmentally conscious manner than anywhere else in the world.
- From 2005 to 2017, total U.S. energy-related CO2 emissions fell by **14 percent**, while the U.S. became the number one energy producer in the world.
- In contrast, global energy-related CO2 emissions increased over 20 percent.
- And since 1990, U.S. natural gas production has **more than doubled**.
- Over that period, methane emissions from natural gas production **fell by over 16 percent**.
- From 1990 to 2018, annual emissions of sulfur dioxide (SO2) from coal-fired power plants fell by over **90 percent** while emissions of (nitrogen oxides) NOx fell by over **80 percent**. And in the past decade alone, mercury emissions from power plants have decreased by nearly **90 percent**.

### **Climate Science/Advisory Boards:**

- EPA is committed to scientific integrity and transparency.
- EPA has the utmost confidence in its career scientist and the members on its science advisory boards and panels.
- EPA routinely takes comments from the public and outside organizations, including those not employed or associated with EPA, and will continue to take into consideration those comments that meet our scientific standards.

### **Air Quality**

- According to the World Health Organization, the U.S. has some of the lowest fine particulate matter levels in the world.
  - U.S. fine particulate matter levels are **five times below the global average**, **seven times below Chinese levels**, and well below France, Germany, Mexico, and Russia.
- Much of this progress has taken place in low-income counties across the country.
- Based on the most recent monitoring data from 2017, **86% of low-income counties were in attainment** with EPA's National Ambient Air Quality Standards (NAAQS), compared to 43% in 2008.

- We are helping areas across the nation reduce air pollution and meet the nation's air quality standards.
- By doing so, many regions across the country are moving from non-attainment to attainment.
- This is breathing new life into the local economy by alleviating a major regulatory burden.

#### **Paris Climate Agreement**

- The U.S. position with respect to the Paris Agreement has not changed. The U.S. intends to withdraw from the Paris Agreement, absent the identification of terms for participation more favorable to the U.S.
- For most countries that sign the Paris Agreement, there are no negative consequences if they don't meet the targets.
- However, under U.S. law, specifically the Clean Air Act, if we go forward with the Paris Agreement and we don't meet our targets, we can be sued by NGOs to force us to meet the targets.
- We are one of the only countries in the world where that could happen. When I explain that to other countries, they say, "No wonder you have concerns."

#### **Lead and Copper Rule**

- As part of Children's Health Month, the U.S. Environmental Protection Agency (EPA) is announcing a proposed rule that significantly improves the actions that water systems have to take to reduce lead in the nation's drinking water.
- This action represents the first major overhaul of the Lead and Copper Rule since 1991 and marks a critical step in advancing the Trump Administration's Federal Action Plan to Reduce Childhood Lead Exposures.
- Although we have made tremendous progress in removing lead from our nation's drinking water, some children and communities are still being exposed to lead.
- EPA is delivering on President Trump's commitment to ensure all Americans have access to safe and clean water by proposing a new Lead and Copper Rule that requires action sooner, increases transparency, and safeguards our children and most at-risk communities.
- In conjunction with today's announcement, EPA and the Department of Housing and Urban Development have launched a new website that summarizes available federal programs that help finance or fund lead service line replacement. The new resource also includes case studies demonstrating how cities and states have successfully leveraged federal resources to support lead service lines (LSLs) replacement projects.
- The agency's proposal takes a proactive and holistic approach to improving the current rule—from testing to treatment to telling the public about the levels and risks of lead in drinking water. When finalized, this proposal will:
  - Require more water systems to act sooner to reduce lead levels and protect public health;
  - Improve transparency and communication; and,
  - Better protect children and the most at-risk communities.
- The proposal focuses on six key areas. Under the proposal, a community water system would be required to take new actions, including, but not limited to:
  - **1) identifying the most impacted areas** by requiring water systems to complete and maintain a publicly-available inventory of the LSLs at homes and requiring water

systems to “find-and-fix” sources of lead when a sample in the home exceeds 15 parts per billion (ppb).

- **2) strengthening drinking water treatment** by requiring corrosion control treatment based on tap sampling results and establishing a new trigger level of 10 ppb (e.g. trigger level outlined below). Water systems will also be required to “find-and-fix” sources of lead by adjusting treatment or water chemistry when a sample in the home exceeds 15 ppb.
- **3) replacing lead service lines** by requiring water systems to replace the water system-owned portion of an LSL when a customer chooses to replace their portion of the line. Additionally, depending on their level above the trigger level, systems would be required take LSL replacement actions, as described below.
- **4) increasing drinking water sampling reliability** by requiring water systems to follow new, improved sampling procedures and rethink sampling sites to better target higher lead levels.
- **5) improving risk communication to customers** by requiring water systems to notify customers within 24 hours if a sample collected in their home is above 15 ppb. Water systems will also be required to conduct regular outreach to the homeowners with LSLs.
- **6) better protecting children in schools and child care facilities** by requiring water systems to take drinking water samples from the schools and child care facilities served by the system.

#### **RFS**

- This past week, EPA announced that President Trump successfully negotiated an agreement on the Renewable Fuel Standard (RFS).
- Under this agreement, the following actions will be undertaken by EPA and USDA:
  - In a forthcoming supplemental proposal building off the recently proposed 2020 Renewable Volume Standards and the Biomass-Based Diesel Volume for 2021, EPA will propose and request public comment on expanding biofuel requirements beginning in 2020.
    - EPA will seek comment on actions to ensure that more than 15 billion gallons of conventional ethanol be blended into the nation’s fuel supply beginning in 2020, and that the volume obligation for biomass-based biodiesel is met. This will include accounting for relief expected to be provided for small refineries.
    - EPA intends to take final action on this front later this year.
    - In the most recent compliance year, EPA granted 31 small refinery exemptions.
- Building on the President’s earlier decision to allow year-round sales of E15, EPA will initiate a rulemaking process to streamline labeling and remove other barriers to the sale of E15.
- EPA will continue to evaluate options for RIN market transparency and reform.
- USDA will seek opportunities through the budget process to consider infrastructure projects to facilitate higher biofuel blends.
- The Administration will continue to work to address ethanol and biodiesel trade issues.

- Since taking office in 2017, the Trump Administration has enacted tax and regulatory policies that have helped make America energy dominant.
- The Administration has cut burdensome red tape through deregulation, including signing a record number of Congressional Review Act (CRA) legislation, repealing the Waters of the United States (WOTUS) rule, reforming the Section 401 process under the Clean Water Act, proposing a new methane rule, and removing the U.S. from the job-killing Paris Climate Accord.
- The Administration has also expedited permitting approvals, has opened up federal land for development, including the Arctic National Wildlife Refuge (ANWR), and will continue to enact pro-growth energy policies to expand American energy dominance.
- EPA will continue to consult with our federal partners on the best path forward to ensure stability in the Renewable Fuel Standard.
- The Trump Administration has overseen year-over-year increases in domestic fuel ethanol production, to the highest level in history and [ [HYPERLINK "https://www.eia.gov/todayinenergy/detail.php?id=39212"](https://www.eia.gov/todayinenergy/detail.php?id=39212) ].
- The President will always seek to engage with stakeholders to achieve wins for the agriculture and energy sectors

#### **California:**

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- First of all, she only gave me the opportunity to answer 2 “yes or no” questions, so I couldn’t explain it to her at the time.
- We delegated the water programs to California, so they are the first line of defense. So were taking a look at a lot of the problems in the California water systems and we outlined them in the letter.”

#### CA Air Letter

- Tuesday, September 24, EPA sent a letter to California Air Resources Board Chair Mary Nichols requesting the state withdrawal its backlog and unapproved State Implementation Plans, and work with EPA to develop complete approvable SIPs.
- Since the 1970s, California has failed to carry out its most basic tasks under the Clean Air Act. California has the worst air quality in the United States with 82 areas that don’t obtain National Ambient Air Quality Standards are max and 34 million people living in areas that do not meet the max, more than twice as many people than any other state in the country.
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- The letter outlines deficiencies that have led to significant public health concerns in California and the steps the state must take to address them.
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- I asked staff to investigate how California was performing implementing its delegated programs. The answer to those questions resulted in the letter to Governor Newsom. I thought he may share my concerns with the performance of his state agencies.
- ~~EPA is aware of numerous recent health-based exceedances under the Safe Drinking Water Act.~~
- ~~These exceedances call into question the State's ability to protect the public and administer its SDWA programs in a manner consistent with federal requirements.~~
- ~~We are also aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment.~~
- ~~The U.S. EPA stands ready to assist California and CalEPA to protect the health and environment of Californians.~~
- In order to ensure that appropriate steps are being taken to protect the 40 million Americans living in California, we are asking for a remedial plan from the state detailing the steps it's taking to address the multitude of issues raised in our letter. We await that response.

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### **One National Program Rule; SAFE step 1**

- The Trump Administration is revoking California's Federal Waiver on emissions in order to ensure that there is one and only one set of national standards for fuel economy and emissions. This will produce far less expensive cars for the consumer, and because new cars are safer, this action will make the U.S. fleet substantially safer.
- **Today's action will save lives, save money for consumers, and create jobs across our nation.**
- President Trump promised the American people that his Administration would address and correct the current fuel economy and greenhouse gas emissions standards, and today, his Administration is taking steps to fulfill this promise.
- One national standard provides much-needed regulatory certainty for the automotive industry and sets the stage for the Trump Administration's final SAFE rule that would save lives and promote economic growth by reducing the price of new vehicles and helping more Americans purchase newer, cleaner, and safer cars and trucks.

### **SAFE**

- The SAFE vehicle rule is a top priority for EPA and the Trump Administration. EPA and NHTSA career and political staff have been and continue to work diligently through the OMB review process to finalize the rule.
- When implemented, the rule will benefit all Americans by improving the U.S. fleet's fuel economy, reducing air pollution, and making new vehicles more affordable for all Americans.
- **As new vehicles are safer than ever**, ultimately, the SAFE rule will save thousands of lives and reduce the cost of a new car by **thousands of dollars, while creating jobs across our nation.**
- When finalized, this rule will be a win for all Americans.

### **WOTUS**

- **Water quality will not be harmed** as EPA and the Army repeal the unlawful Obama Administration WOTUS rule and restore longstanding and familiar Clean Water Act regulations.

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- The previous administration’s 2015 rule wasn’t about water quality. It was about power – power in the hands of the federal government over farmers, developers, and landowners.
- The final Step 1 rule will end the regulatory patchwork that included implementing two competing Clean Water Act regulations, which created uncertainty across the United States.
- EPA will go forward with finalizing the Step 2 proposal that would give states and tribes more flexibility to determine how best to manage waters within their orders, in accordance with the objective and policies of the Clean Water Act.
- The proposal’s new, more precise definition ~~will~~ ~~would~~ mean that farmers, land owners, and businesses will spend less time and money determining whether they need a federal permit and more time upgrading aging infrastructure, building homes, creating jobs, and growing crops to feed our families.
- **This action continues President Trump’s deregulatory agenda.** Under President Trump, EPA has finalized **46 deregulatory actions**, saving Americans more than **\$3.7 billion dollars in regulatory costs**. We have an additional 45 actions in development projected to save billions more.

#### OOOOa

- Wednesday, August 28, EPA took an important step toward removing inappropriate regulatory duplication, that aims to save the oil and natural gas industry in the United States many millions of dollars in compliance costs.
- This action by EPA responds to President Trump’s *Executive Order on Promoting Energy Independence and Economic Growth*. That order directs agencies to review existing regulations that potentially “burden the development or use of domestically produced energy resources,” including oil and natural gas, and to rescind or suspend regulatory requirements if appropriate.
- Our proposal seeks to stop burdensome and costly federal regulations impacting the oil and natural gas industry that add extra cost to domestic energy production while providing minimal environmental benefit.
- Oil and gas are valuable resources, and the industry has every incentive to minimize emissions and maximize use.
- Since 1990, natural gas production in the United States has almost doubled while methane emissions across the natural gas industry have fallen by nearly 15 percent.
- Our regulations should not stifle this innovation and progress in an industry that is so vital to the U.S economy.
- **Cost Savings:**
  - The bottom line for the industry and our economy is that by rescinding inappropriate duplicate regulations, we’ll continue to provide substantial environmental protection while saving the industry millions of dollars over many years.
  - Our regulatory impact analysis estimates that the proposed amendments would save the oil and natural gas industry \$17-\$19 million a year, for a total of \$97-\$123 million from 2019 through 2025.

#### ACE

- One of President Trump's first acts in office was to direct EPA to rescind and replace the Clean Power Plan.
- The CPP would have asked hard-working Americans to bear the cost of the previous administration's climate plan.
- Earlier this summer we released the final Affordable Clean Energy rule.
- ACE will give states and the private sector the regulatory certainty they need to invest in new technologies and continue to provide affordable and reliable energy.
- When ACE is fully implemented, we expect to see U.S. power sector CO2 emissions fall by as much as 35% below 2005 levels and reductions in sulfur dioxide (SO2), nitrogen oxides (NOx), and particulate matter (PM) emissions.
- Unlike the CPP, our ACE rule adheres to the four corners of the Clean Air Act.
- It gives states the regulatory certainty they need to continue to develop diverse and reliable energy portfolios.
- EPA projects that ACE will result in annual net benefits of anywhere from \$120 million dollars to \$730 million dollars.

#### **Superfund**

- In FY 2019, we deleted all or part of 27 sites from the National Priorities List, the largest number of deletions in one year since 2001.
- We believe that a site on the National Priorities List should be just that – a national priority.
- By strengthening the Superfund program, we are breathing new life and new opportunity into disadvantaged communities around the country.
- Promoting Redevelopment and Community Revitalization: The Superfund Task Force has worked hard to increase the number of NPL sites that are returned to communities for redevelopment. In 2018, we made 51 sites ready for their anticipated re-use, the highest total since FY 2013.

#### **PFAS**

- Taking action to address per- and polyfluoroalkyl substances (PFAS) is a top priority for the Administrator, EPA leadership and the entire agency.
- The [ [HYPERLINK](https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fpfas%2Fepas-pfas-action-plan&data=02%7C01%7Cjpagliery%40univision.net%7C03174e1eafc14b53275408d7273585c0%7C91ff98f7aa664cf39617b5c4f409c51d%7C0%7C0%7C637020984266855480&sdata=N%2FJ7njtyGx2R7AUh158tbDRT9zy2j1nDe%2B2VpqrOBLU%3D&reserved=0) "https://nam04.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.epa.gov%2Fpfas%2Fepas-pfas-action-plan&data=02%7C01%7Cjpagliery%40univision.net%7C03174e1eafc14b53275408d7273585c0%7C91ff98f7aa664cf39617b5c4f409c51d%7C0%7C0%7C637020984266855480&sdata=N%2FJ7njtyGx2R7AUh158tbDRT9zy2j1nDe%2B2VpqrOBLU%3D&reserved=0" ] is the first-ever multi-media, multi-program, national research, management and risk communication plan to address a challenge like PFAS.
- The plan identifies short-term solutions for addressing these chemicals and long-term strategies that will help provide the tools and technologies that states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source—even before it gets into the water.
- The agency is making progress on the PFAS Action Plan by developing tools and expanding the body of scientific knowledge needed to understand and effectively manage risk from PFAS compounds.

- **Additional Background**

- For example, the Agency is moving forward with the process to establish a national primary drinking water standard as outlined in the Safe Drinking Water Act (SDWA) for PFOA and PFOS.
- As the next step in this process, EPA will propose a regulatory determination for PFOA and PFOS by the end of this year and will work through the rulemaking process as expeditiously as possible. The Agency is also gathering and evaluating information to determine if regulation is appropriate for other chemicals in the PFAS family.

### **Trump Administration Achievements**

- Our Nation is blessed with incredible natural resources. Resources that create jobs and improve lives.
- We know that we can extract and use these resources while protecting the environment at the same time. We don't have to choose between one or the other.
  - From 1970 to 2018, the U.S. has reduced the six main air pollutants 74% while the economy grew over 275%.
  - From 2005 to 2017, the U.S. reduced its energy-related CO2 emissions by 14%.
  - And while these reductions occurred, we became the number one oil and gas producer in the world.
  - In contrast, global energy-related CO2 emissions have increased over roughly 15% since 2005.
- On the water front, we've made similar progress.
  - Today, we are ranked number one in the world for access to clean drinking water.
  - In the 1970s, more than 40% of our nation's drinking water systems failed to meet even the most basic health standards.
  - Today, over 92% of community water systems meet all health-based standards, all the time.
- We're making tremendous progress cleaning up contaminated lands and hazardous sites.
  - In Fiscal Year 2019, EPA deleted all or part of 27 sites from the National Priorities List, the largest number of deletions in one year since Fiscal Year 2001.

### **Deregulation:**

- Under President Trump, EPA has finalized **46 deregulatory actions**, saving Americans more than **\$3.7 billion dollars in regulatory costs**.
- We have an additional 45 actions in development projected to save billions more.
- And a recent report found that we were the top agency in fulfilling President Trump's two-for-one executive order.
- During his first two years in office, we cut **26 regulations** and created just **four new ones**.

### **Regulatory Certainty**

- I think what is effective regulation is one that follows the law and will be held up in courts.
- We are putting forward proposals that follow the authority Congress has given us.
- I think that is the responsible thing for the agency to do.

- I don't think it's responsible with our form of government with three branches, I don't think it's EPA's job to write the legislation on its own.
- We have to follow the statutory constraints Congress has given us, and I think we are doing that under the ACE proposal.

#### **Animal Testing:**

- EPA is making significant efforts to reduce, replace and refine its animal testing requirements under both statutory and strategic directives, while ensuring protection of human health and the environment.
- EPA is aggressively pursuing significant reductions in the next 5 to 15 years to mammal studies, study requests and funding of this research.
- EPA is also awarding grants for the advancement of research on alternative methods to animal testing.
- Alternatives to traditional animal testing used by EPA will be those that ensure that the Agency's regulatory, compliance, and enforcement activities, including chemical and pesticide approvals and Agency research, remain fully protective of human health and the environment.

#### **Newark Water:**

- EPA has a long history of assisting cities including the City of Newark and states across the country address lead in drinking water.
  - For example, in the past 10 years, Newark has received multiple drinking water State Revolving Fund (DWSRF) loans totaling \$66.5 million.
- The City of Newark, the U.S. Environmental Protection Agency (EPA) and New Jersey Department of Environmental Protection (NJDEP) have been working together to determine the efficacy of the filters being used to address lead in drinking water in the Newark area.
- Since mid-August, EPA has had internationally recognized experts on-the-ground assisting with the collection and analysis of drinking water samples. The agency is also providing regular support to the city and the state, through technical calls and support.
- EPA continues to stand ready to assist the city and state as we work together as quickly as possible to resolve these issues and to ensure that all residents of Newark have access to safe drinking water.

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#### **Pesticides**

- Feeding the country and feeding the world is essential. The Trump Administration is working hard to ensure U.S. farmers and ranchers have access to the best modern farming technologies so that they can continue to grow strong yields, feed the world and enhance our nation's food security.
- The federal government is working hard to ensure our farmers continue to have access to the safest & most effective pesticides, herbicides, fertilizers— among other important crop protection tools.
- The law requires EPA to review each of the over 700 commercially available registered pesticides and review/ re-register them every 15 years. In FY 219 alone, we are making 120 of these decisions to give farmers and ranchers the clarity they need surrounding the

availability of these tools that are vital to production agriculture and ultimately rural economies.

- This is unlike some states across the country, like California, where for politically motivated reasons they have sought to ban scientifically-proven, otherwise safe pesticides that their own farmers and ranchers need in order to stop harmful pests and invasive plant species from ruining their yields.
- In April, we took the next step in the review process for **glyphosate**.
- We found – as we have before – that glyphosate is not a carcinogen and there are no risks to public health when glyphosate is used in accordance with its current label.
- On a similar front, we extended the registration of **dicamba** for two years, along with important new label restrictions.
- We tightened the application requirements in order to specifically help mitigate drift issues.

#### **Prop 65/Glyphosate Labeling**

- On Friday, Aug. 9, EPA issued guidance to registrants of glyphosate to ensure clarity on labeling of the chemical on their products.
- EPA will no longer approve product labels claiming glyphosate is known to cause cancer – a false claim that does not meet the labeling requirements of the *Federal Insecticide, Fungicide, and Rodenticide Act* (FIFRA).
- The State of California’s much criticized Proposition 65 has led to misleading labeling requirements for products, like glyphosate, because it misinforms the public about the risks they are facing. This action will ensure consumers have correct information, and is based on EPA’s [ [HYPERLINK "https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0073"](https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0073) ].

#### **Sulfoxaflor**

- **On July 12, 2019**, EPA issued a long-term approval for the insecticide sulfoxaflor— an effective tool to control challenging pests with fewer environmental impacts.
- **This will bring long-term certainty to farmers as EPA had previously been issuing emergency exemptions for its use annually for several years and only for certain crops. Clearly, the full-term registration was warranted and the science backs it up.**
- EPA conducted an extensive risk analysis on this product, including the review of one of the agency’s **largest datasets on the effects of a pesticide on bees ever**, EPA has approved the long-term use of sulfoxaflor on alfalfa, corn, cacao, grains (millet, oats), pineapple, sorghum, teff, teosinte, tree plantations, citrus, cotton, cucurbits (squash, cucumbers, watermelons, some gourds), soybeans, and strawberries.

#### **Executive Orders on Guidance and Enforcement**

- EPA strongly support transparency and fairness. These two executive orders provide us with the opportunity to institutionalize reforms we are already implementing at the Agency. For example, the Office of Water has already completed a review of its guidance documents, including draft guidance that had never been finalized, even after 10 or more years. The Office of Enforcement and Compliance Assurance has already refreshed and

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expanded EPA's self-audit programs, the encourage companies to return to compliance more quickly.

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